International Norms: Governing Police Identification & the Wearing of Masks During Protest.

Two Rapid Evidence Reviews

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Introduction

This twin report provides two inter-related Rapid Evidence Reviews on the issue of international norms with respect a) the wearing of police identification during the policing of protests and b) laws governing the use of masks among protestors. The twin report was commissioned by the *Hong Kong Independent Police Complaints Council* (HK IPCC) in September 2019. It has been complied by *Crowd and Conflict Management Ltd* (CCM) a specialist consultancy company directed by Professor Clifford Stott. For this project CCM is acting on behalf of the *Keele Policing Academic Collaboration* (KPAC), a strategic Research Centre at *Keele University* in Staffordshire UK. KPAC's core mission is to mobilise research capability in ways that improve understandings of crime and policing issues. CCM agreed to undertake a programme of high-quality research rapid to aid the HK IPCC in its thematic study on public order policing arising from the recent events in Hong Kong. Under the Direction of Professor Clifford Stott CCM has compiled this twin report by coordinating an international team of University based scholars with high levels of expertise, research and operational experience of policing. The teams are based at major Research Centres and led as follows: Professor Clifford Stott and Professor of Practice Marcus Beale, Keele Policing Academic Collaboration (KPAC), Keele University, Staffordshire, UK; Dr Geoff Pearson, Senior Lecturer in Criminal Law, Centre for Criminology and Criminal Justice, University of Manchester; Dr Jonas Rees, Yann Rees, Michael Papendick & Prof. Dr. Andreas Zick, Institute for Interdisciplinary Research on Conflict and Violence and Prof. Dr. Andreas Fisahn & Zoumboulia Christakis, Faculty of Law, Bielefeld University, Germany; Dr Alain Brechbühl, Forschungsstelle Gewalt bei Sportveranstaltungen, University of Bern, Switzerland; Professor Ed McGuire& Megan Oakley, School of Criminology and Criminal Justice, University of University of Arizona. Each University based team have undertaken research by conducting literature and media reviews, examining the legal and political contexts and consulted with senior police, governmental and other relevant officials. All information included herein is accurate to the best of the authors' knowledge. Given the requirement to produce this report in a rapid time frame we have undertaken a sampling approach exploring the issue of police identification and laws governing masking. The approach provides a broad array on practices adopted in different forms of government and legislative contexts. These include Federal Sates of Canada, the United States, Germany, Switzerland and Australia as well as Unitary states such as the United Kingdom, Denmark, Sweden and Norway. While inevitably our sample is limited in scope it does provide an understanding of the kinds of international norms that exist in countries with similar legislative and policing structures to those adopted in Hong Kong.

Summary

Police identification during protests.

Overview

Of all the countries examined in our sample all have some requirements for officers to be identifiable during the policing of protests. However, this requirement is not always governed by law and the majority of countries manage the issue through requirements and obligations created by police forces themselves. In various cases (e.g. the USA, Germany, Switzerland and Canada) there is considerable variability due to the complexity of police governance processes. Nonetheless the guiding principle driving the normative practice of ensuring police identification is visible during the policing of protests are public accountability – particularly with respect to police use of force, ensuring public confidence in policing, maintaining professionalism on the part of individual officers and being operationally beneficial for police forces themselves. All countries sampled appear to have had some difficulties ensuring all officers at all times abide by the regulations. There is very little evidence of detriment to officers arising from the requirement as well as some creative techniques for managing and mitigating such threats (e.g. the use of specific code numbers with restricted capacity to link codes to officer identity).

Canada

There are no Federal Laws requiring officers to wear identification. However, the norm is for officers to wear identification during protest events and regulation to do so exists and is determined at local level. As a consequence, there are some variations in specific requirements. Several localities require officer names to be displayed, rather than merely identification numbers, although some, for example the Winnipeg, accept officer safety would be jeopardized. Interestingly, the Toronto Police union tried to overturn the name tag requirements on safety grounds but failed to evidence the argument. Despite these requirements there have been high profile examples during the policing of protests where officers have covered up their identification, drawing stinging criticism from political leaders and others.

United States of America

There is no Federal law requiring the identification of officers. Nonetheless, the norm is that officers are required to display their name and/or identification number on their uniform. Requirements are set at State or local level. The US has experienced numerous examples where officers have been 'outed', with their personal and private lives exposed and shared on social media, with officers and

their families being harassed and targeted as a result. Often these cases emanate from perceived illegitimate or heavy-handed police interventions. Organisationally, these cases have led to more police departments utilising just identification number rather than name badges whilst policing protests.

Denmark

All police offices in uniform are legally obliged to wear their identification number, either on their chest or shoulders. This obligation forms part of the national uniform regulations issued by the Ministry of Justice. It is the responsibility of the local force to enforce these requirements. Generally, the requirement to wear their identification number is complied with, although there are occasions where they fail to, which attracts negative media and political attention. In drawing up these regulations the Danes conducted a survey of police officer identification requirements in twelve other European Union states (Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Malta, Luxembourg, Rumania, Slovakia and Slovenia). They concluded that all these countries used some kind of marking on the uniform except Luxembourg and parts of Romania. Police accountability was always a contributing factor for introducing their identification requirement. No country in the sample reported that officer identification had resulted in elevated levels of harassments against police officers.

Germany

Policing in Germany is primarily delivered and regulated at State rather than Federal level, resulting in variable approaches to uniform identification requirements. Only one Sate has chosen legislation, with the majority relying on internal police instructions. However, fifteen Sates provide a very similar requirement, which includes wearing name badges with regular uniforms and displaying the identification number on their specialist public order uniforms. There is one state where no requirement is currently specified. There is also a European Court of Human Rights judgement from 2017, which articulates the police public accountability argument, where 'authorities deploy masked police officers to maintain law and order or to make an arrest, those officers should be required to visibly display some distinctive insignia, such as a warrant number' and went on to say it was important because the 'consequent inability of eyewitnesses and victims to identify officers alleged to have committed ill-treatment can lead to virtual impunity for a certain category of police officers'. Following Berlin's 2010 introduction of the requirement for officers to display their name or identification numbers they collected data for 5 years, with no instances noted where there were negative consequences for the officers.

Norway & Sweden

The police in Norway when dealing with the public are required by the Ministry of Justice to wear their identification number so that it is visible to the public. This includes officers policing protests. In 2011 the Ministry of Justice commented that the system had improved communication between the citizen and the police, reducing conflict and making it easier for the public to identify police officers. Sweden's Police Authority issues instructions that all police officers in their regular uniform are required to display a name tag, which includes their name, title, function and place of work. Officers policing protest or 'public disorder' are deployed in small units called Delta Squads, consisting of 8 officers. Each squad has a unique number for that deployment, which will be shown on the front and rear of the officer's uniform. The officer's individual identification number is displayed on the front and rear of their helmets – black lettering, 3 cm high. It is the responsibility of the police commander to ensure identification numbers are properly displayed. Officer's identification can be covered where they are at risk of threats or violence. Like all other countries sampled Sweden also has experience of officers failing to display their identification numbers.

Switzerland

Regulations concerning the identification of police officers in Switzerland are complex and is determined at the local or Canton level. Generally, regular uniforms will display the family name of the officer on their chest, whilst public order still requires identification to be displayed. It is generally the individual officer's responsibility to display their identification. There were no concerns or difficulties for officers reported from Switzerland resulting from the displaying of personal identification.

The United Kingdom

The displaying of identification numbers by police officers in the UK is not required by legislation and is instead at the discretion of the individual Chief Constable. Once required by force policy, the failure of an officer to comply will be a disciplinary offence, falling under the Police (Conduct) Regulations 2008. The College of Policing does provide national statutory guidance to all UK police forces that stipulates that uniformed officers, including public order uniforms, must display their insignia/epaulettes at all times. The vast majority of forces have incorporated this guidance into their local policies, with many going beyond displaying individual identification numbers and including surnames too. There is national guidance for public order helmets, which must include a force identifier, rank and individual identification number visible from the front and rear. The size and

colours are also specified. Whilst generally officers comply with the requirements, there have been high profile examples where a small minority of officers have failed to do so, drawing highly critical political and media commentary. The UK also has considerable experience in addressing extreme safety threats to officers, most acutely in Northern Ireland where police officers have been seen as a legitimate target by terrorist organisations. Nonetheless these forces do not deviate from the guidance but actively progress many mitigations to enhance the safety of their officers and staff.

Australia

The majority of the population in Australia live in the country's six states. Thus, the majority of day to day policing is carried out by state police forces (Victoria Police or Queensland Police, for example), operating to state legislation. It is these state police forces that are responsible for policing protest within their jurisdiction. The routine wearing of name badges by officers is well established and compliance is said to be very high. Officers policing protest are required to display their rank/name (or registered number) on the chest of their uniform – this will either be an 'iron on' badge or one that is sewn on. Generally, Queensland Police would attempt to police protest with officers wearing normal head gear, however, should the nature of the protest require officers to wear 'riot' helmets then these have the rank and name of the officer on them. The experience of officers or their families being threatened and harassed is very rare, and when it does occur, they will receive immediate practical security support from their police force and the occurrence will be thoroughly investigated.

Human and Civil Rights Obligations

Although many of the states discussed here have little in the way of national statutory obligations placed upon police officers, there needs to be consideration of overarching human and civil rights relating to the ability of citizens to pursue complaints against the police for breaches of these rights. The lack of a system in place to allow citizens to identify officers can have a chilling effect on their ability to enforce their constitutional, civil, or human rights against the police. The European Court of Human Rights has ruled in favour of complainants on both procedural and substantive grounds where officers have not been wearing individual insignia (or where their identities have otherwise been hidden) and where this has had the effect of preventing effective investigation of alleged abuses.

Wearing of masks during protests

Overview

While all the countries studied (although not all regions of those countries) have some police anti-masking powers that could be applied during the policing of protest there was considerable variation in the scope of those powers. Canada, for example, bans the wearing of a mask to conceal one's identity while taking part in an unlawful assembly, whilst in the UK there is no offence of concealing one's identity, although a protester can be required to remove any face coverings to facilitate a personal search. With the exception of Sweden, police forces rarely engage the powers they have for fear that intervening escalates tensions and conflict with the protesters, rather than supporting the wider operational objectives. Across many jurisdictions there have been attempts to introduce or extend anti-masking powers, as protester behaviour and tactics change, but with the occasional exception these have proven controversial and failed to secure sufficient political support to become law. In both Europe and the USA these anti-masking police powers often sit uncomfortably next to human rights requirements (articles 9, 10, 11 and 14 of the European Convention of Human Rights and the 1st Amendment of the US constitution) and the German experience shows that thoroughly thought through wording of any legislation is essential to ensure any powers provided for can be practically applied.

Canada

In 2013 Canada introduced a national anti-masking law that bans wearing "a mask or other disguise to conceal one's identity while taking part in a riot or an unlawful assembly", with a possible penalty of 10 years imprisonment upon conviction. Canada already had legislation that prohibited the use of disguises, including face masks, with intent to commit an indictable offence. However, the requirement to prove intent frustrated the use of this power during protests so the law was updated and extended. It should be noted that the new power is restricted to incidents that are declared either a riot or an unlawful assembly. The anti-masking laws though remain controversial, with concerns over freedom of speech and expression. Operationally, the anti-masking powers are rarely enforced, with policing tending to focus on the wider criminal conduct of the protesters.

United States of America

There is no USA wide federal anti-masking legislation. A little shy of a third of US states have statutes, with caveats for reasonable circumstances, regulating the use of masks in public. Additionally, there

are numerous county and city level anti-masking regulations. The Courts have repeatedly supported the 1st Amendment – freedom of speech and expression – noting sometimes these rights can only be secured through anonymity, even where violence has erupted at similar events. Through these ruling the scope of these powers has generally been narrowed. Recent experiences with protest in the USA have produced calls for further anti-masking legislation, but for the odd exception, the political journey has proven too controversial with no new legislation resulting. In reality, the existing powers have been rarely applied by police and when they are, they often have been met with resistance and increased confrontation, attract controversy and lengthy legal processes. Anti-masking laws in the US are also difficult to enforce. When the police cite anti-mask laws and direct protesters to de-mask, they're often met with resistance and a power struggle ensues, escalating the conflict between protesters and the police. In cases where lawsuits have been brought against police for arrests that include citing anti-mask laws, the laws are criticized as being outdated and unconstitutional. The result has been that even in states where these laws exist, they are very rarely enforced by the police. Most of the incidences in which masked protesters are arrested have to do with their actions, not the mask itself. The general practice among US police officers is not to make the mask-wearing an issue unless a protester's behaviour escalates to the point of criminal activity. However, given the rise in mask-wearing among protestors and more heated protest events, some cities in the country are trying to change this (most recently Portland and Boston).

Denmark

For nearly 20 years Denmark has had legislation that prohibits any person at a meeting, gathering, procession or similar having their face entirely or partially covered with a hood, mask, paint or similar which is likely to prevent identification. Upon conviction a person may be fined or imprisoned for up to 6 months. Equally, they are prohibited from possessing face covering items. Crucially, this law does not apply to items covering the face for 'other creditable purpose'. The legislation allows the police to intervene where protesters use masks and undertake preventative searches of protesters travelling to protest sites. The police recognise that their interventions can cause confrontation and escalation and so seek to take a proportionate approach in the circumstances. Operationally, it can be challenging determining when a face covering is for a creditable purpose. Of note, in 2018 Denmark passed legislation preventing face coverings more generally in public, which was aimed at the burqa and niqab, and this has remained controversial

Germany

The legislative frameworks are fairly complex in Germany, with only a few States implementing specific legislation whilst the others continue to rely on transitional Federal powers. In 1985 the law that prohibited face coverings that impeded identification became an offence (imprisonable) rather than as previously, a misdemeanor (fine only), with the consequence that the police must intervene to uphold the law, rather than having discretion whether to act or not. The law prohibits during public open-air assemblies, meetings etc. to participate in an outfit that is intended to prevent identification, or to carry an item to an event for that purpose. Upon conviction a person may be fined or imprisoned for up to a year. There are challenges and contradictions with this legislation. For example, a person can be travelling to a protest on a motorcycle, where traffic laws require them wear a helmet, but the possession of the helmet may simultaneously breach the anti-face coverings legislation. Equally everyday items, such as sunglasses, have also proved problematic with courts judging they can conceal identity, but then they struggle to determine sufficient intent. This ambiguity is operationally unhelpful. After the 2017 Hamburg G20 research was conducted, through interviews, of the policing of the protests. This found that as the police sensed greater offending (wearing of masks) they enhanced their police presence and moved it closer to the protesters with the intention of deterring offending, but police acknowledge that these tactics may have backfired, escalating tensions and violence.

Norway & Sweden

Norway has had anti face covering legislation for nearly 25 years. It prohibits people, participating in protests and other public gatherings, covering their face unless they are doing so as part of a theatre, masquerade or similar. Upon conviction a person can be fined or imprisoned up to 3 months. We have no information on its practical application. Since 2006 Sweden has had legislation that prohibits protesters partially or fully covering their faces in a way that makes it difficult for them to be identified. This legislation only applies once disorder or disturbances occur (or there is an immediate risk that they will). On conviction a person may be fined or imprisoned up to 6 months. Recently the law has been extended to sporting events. The law does not apply to face covering for religious reasons and other lawful purposes (e.g. part of a police uniform). To apply these powers the police must communicate with the crowd to advise them that this power can now take effect. The Swedish police often find this process of communication and engagement causes peaceful and nonconfrontational protesters to unmask, whilst clearly differentiating those protesters that are now intent on breaking the law.

Switzerland

Anti-masking legislation is dealt with at Canton level. Not all Cantons have any anti-masking legislation and those that do classify the offence at infringement level (fine only). Operationally the police would consider carefully the proportionality of intervening against those wearing a mask during a public order operation. Local contact with the police, for this work, suggested such interventions would almost always be judged as disproportionate, with commanders fearing it would escalate tensions rather than defuse them.

United Kingdom

UK legislation allows police officers to require the removal of face coverings (or hat) or searching of them only in a limited number of tightly regulated circumstances. Even in these cases the requirement to remove or search a face covering is only allowed to facilitate the original purpose of the search. There is no criminal offence of wearing or using a facial covering to hide one's identity, only of failing to remove it when required to do so. Even this power requires the officer to reasonably believe the item is wholly or mainly to hide the identity of the individual and is not worn for another reason (e.g. a hijab for religious reasons), even if the effect is the same. Theoretically there are police powers that would allow them to impose a condition of 'no masks' on a protest march or procession, but we are unaware of these powers ever being used in such a way. Whilst there have been several attempts to extend anti-masking legislation it has never secured sufficient support to become law. Operationally, the police rarely employ the limited powers there are to address face coverings within the context of protest.

Australia

Each state has its own approach to anti-masking powers. Below are some examples, rather than a comprehensive catalogue, of statutory provisions that provide the police with powers that could be used to address protester masking in a number of states in Australia. Several states have introduced legislation that provide police with the power to require the removal of face coverings to facilitate identification by a police officer. It is apparent that the Australian experience of applying these anti-masking powers is similar to those of their European and North American colleagues – the powers are relatively useful and effective when applied to situations involving very few people/officers (for example, resolving the identity of a driver during a traffic stop or a drugs search), but become very challenging within the context of policing protest, where despite large numbers of officers being deployed they are still considerably outnumbered by protesters. Here, commanders judge that

intervening in a hostile crowd to enforce a 'no masks' condition will usually require a disproportionate number of officers to enforce (so limiting future options), create greater conflict with the protesters, and not progress the overall objectives of the policing operation. Hence, these powers have been rarely pursued.

European Human Rights Law

In all the aforementioned European countries, powers have to be exercised in accordance with the European Convention on Human Rights. With regard to face coverings, the relevant rights that could be engaged are Article 9 (Freedom of Religion), Article 10 (Freedom of Expression), and Article 14 (Discrimination in Access to Rights). There is also the potential for Article 11 to be engaged if protesters believed they could not gather together without facial coverings due to potential repercussions from surveillance by the state. Article 8 (Privacy) concerns may apply in certain situations. Where these qualified rights are infringed by the actions of the police, then officers exercising their powers must be certain their use is necessary, proportionate, and not arbitrary in application, which would require very careful thought by the police commander. It should be noted that most of the laws referred to above have not been tested under Human Rights law and some may be susceptible to challenge in the future. Operationally across the continent commanders have been reluctant to engage their anti-masking powers towards protesters, judging that in the context of a complex policing operation the use of these powers is not necessary and proportionate – on the contrary, they expect tensions, conflict and violence to increase.

Detailed overviews

United States of America

Police Identification During Protests

There are no national laws in the United States requiring law enforcement officers to wear nametags or identification numbers on their uniforms. Regulations governing this issue are typically enacted at the state or local levels. After the protests and riots in Ferguson, Missouri following the death of Michael Brown in 2014, the Civil Rights Division of the U.S. Department of Justice wrote a letter to Ferguson Police Chief Tom Jackson about his officers not wearing their nametags on their uniforms. The letter instructed Chief Jackson to begin ensuring that his officers wore their nametags. The wording used in the letter is instructive:

> "Officers wearing name plates while in uniform is a basic component of transparency and accountability. It is a near-universal requirement of sound policing practices and required under some state laws. Allowing officers to remain anonymous when they interact with the public contributes to mistrust and undermines accountability. The failure to wear name plates conveys a message to community members that, through anonymity, officers may seek to act with impunity. Further, the lack of name plates makes it difficult or impossible for members of the public to identify officers if they engage in misconduct, or for police departments to hold them accountable"[1]

In most states, the determination about whether officers must display their name or identification number is left to individual police agencies. However, some states have enacted laws regulating these issues. For instance, in Massachusetts, uniformed police officers are not required to wear a "badge, tag or label of any kind which identifies [them] by name." However, any uniformed officer in

[1] Christy E. Lopez, Ferguson Police Department Investigation: Officer Name Plates, Letter from the United States Department of Justice to Chief of Police Thomas Jackson, September 23, 2014, http://www.justice.gov/crt/about/spl/documents/ferguson_ltr_nameplates_9-23-14.pdf.

Massachusetts who does not wear their name on their uniform, "shall wear a badge, tag or label which identifies [them] by number."[2]

In California, state law dictates that "any uniformed peace officer shall wear a badge, nameplate, or other device which bears clearly on its face the identification number or name of the officer."[3]

Most law enforcement agencies in the United States have guidelines outlining dress codes and uniform requirements. Most require the display of the officer's name, badge, or a unique identification number. In larger departments, supervisors are generally required to 'inspect' officers daily or monthly to ensure that they are wearing uniforms and equipment that comply with policy. In departments that require an officer's name to be displayed, some allow exceptions under specific tactical circumstances. For example, the Baltimore (Maryland) Police Department allows for exceptions for "special operational reasons at the direction of the member's commanding officer."[4] Such exceptions are typically isolated to undercover police operations where officer identification would compromise an investigation.

Even in situations where tactical equipment such as helmets and shields are needed, officers are generally required to wear proper identification. In 2014, the Interagency Board for Emergency Preparedness and Response drafted a report at the request of the National Institute of Justice entitled, "United States Criminal Justice Officer Needs and Requirements for Protective Helmets." The agency noted that labelling and documentation requirements for helmets must include a space for "the identification of [the] wearer (i.e., name, rank, and serial number)."[5] Additional examples of officer identification requirements across states and individual departments are provided Appendix A.

There are several reasons why police officers sometimes want to conceal their identity. Policing is a dangerous job and officers routinely encounter individuals who wish to harm them. The rise of social media has made it especially easy to 'out' officers by name. This often happens when an officer's

[2] Massachusetts General Laws, chapter 41, § 98C, https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter41/Section98C.
[3] California Code, Penal Code, § 830.10, https://california.public.law/codes/ca_penal_code_section_830.10.
[4] Baltimore Police Department, *Police Badges*, Policy 1501, March 25, 2017, https://www.powerdms.com/public/BALTIMOREMD/documents/54986.
[5] The Interagency Board for Equipment Standardization and Interoperability, *United States Criminal Justice Officer Needs and Requirements for Protective Helmets*, Report submitted to the National Institute of Justice, April, 2014, https://www.interagencyboard.org/sites/default/files/publications/Needs%20and%20Requirements%20for%20Protective%20Helmets.pdf.

actions are legitimately called into question, when members of the public feel emboldened to target police officers as part of a social justice mission, or when disgruntled lawbreakers have a grudge against a specific officer or department. This type of public outing can sometimes place the safety of police officers and their families in jeopardy.

Police are especially vulnerable to 'doxing.' Originally coined by hackers as a shorthand for 'documents', the term 'doxing' has come to refer to the sharing of personally identifiable information (PII) online, typically in a retaliatory manner, so that a "formerly anonymous person's identity [is] revealed."[6] Doxing is considered a cybercrime and it is an arrestable offense in some states under specific circumstances.

During the Occupy Wall Street protests in 2011 and 2012, individuals protesting corporate greed quickly ended up turning their attention toward police, often for using force against the protesters in a manner that was considered excessive and out of proportion with the threat. For instance, a New York Police Department (NYPD) officer deployed pepper-spray in the faces of peaceful protesters, an act that ended up costing the city of New York $332k in lawsuit settlements.[7] Activists used camera footage to identify the officer's name from his uniform and then leaked his personal information, including home phone and address, to the public.[8] Recently, two men in New York were arrested for doxing dozens of NYPD officers, releasing information such as their home addresses and social security numbers and making harassing phone calls to the officers.[9] Numerous other examples exist, including the doxing of Officer Darren Wilson, the officer who shot and killed Michael Brown in Ferguson, Missouri. Fifty-two police officers and the Chief of Police were doxed after another controversial shooting in Cincinnati, Ohio.[10] These examples illustrate that when the police engage in questionable use of force, the consequences can be far-reaching.

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6 Megan Garber, "Doxing: An Etymology," The Atlantic, March 6, 2014, https://www.theatlantic.com/technology/archive/2014/03/doxing-an-etymology/284283/.
7 "NYC Agrees to Pay 6 Pepper-Sprayed Occupy Wall Street Protesters $332k," CBS New York, July 6, 2015, https://newyork.cbslocal.com/2015/07/06/occupy-wall-street-settlement/.
8 Adam Martin, "Anonymous Goes After the Pepper Spray Cop's Personal Info," The Atlantic, September 26, 2011, https://www.theatlantic.com/national/archive/2011/09/anonymous-goes-after-pepper-spray-cops-personal-info/337447/.
9 Jonathan Dienst, "Two New York Men Arrested for Allegedly Doxing Dozens of Law Enforcement Officers: Prosecutors," NBC4 New York, September 5, 2019, https://www.nbcnewyork.com/news/local/Two-New-York-Men-Arrested-for-Allegedly-Doxing-Dozens-of-Law-Enforcement-Officers-559442691.html;
10 Johnny Nhan, *Issues and Controversies in Policing Today*, (London: The Rowman & Littlefield Publishing Group, 2019).

Fear of doxing and other types of social media 'outing' have caused many officers to cover their identification during protest or riot events. This type of behavior is typically at odds with departmental policy. During an Occupy Wall Street protest in Oakland, California, an officer covered the name on his uniform with black electrical tape. When confronted by protesters, a supervising Lieutenant standing nearby removed the tape. This act (caught on video), resulted in the officer's one-month suspension and the Lieutenant's demotion to Sergeant (for failing to report the incident to Internal Affairs).[11]

These types of behaviours are not common among police officers in the United States, but do occur with some regularity at protests and mass demonstrations. Below we provide a handful of newsworthy examples:

- In 1999, police are reported to have removed or covered their nametags while responding to the well-known World Trade Organization protests. A report issued by the American Civil Liberties Union of Washington concluded: "there are widespread reports of police using excessive force against persons who posed no physical threat, were not resisting arrest, or were simply trying to leave the area. In their riot gear, officers were visually indistinguishable from one another. Lacking visible identification, some of them took advantage of their anonymity to assault protesters. And, some officers refused direct requests to provide names or badge numbers."[12]
- In 2016, officers in Milwaukee, Wisconsin were criticized for covering their names during a protest against President Donald Trump. The Milwaukee Police Department noted that, "our policy allows officers to replace their name tag with a unique identifying number when they are involved in a protest/ demonstration/rally type of deployment."[13]
- In 2017, four St. Louis police officers were indicted for brutalizing an undercover police officer during a protest after they mistook him for a protester. More than a dozen Federal civil rights

[11] Chris Roberts, "Oakland Cops Disciplined for Hiding Nametag During Occupy Protest," *NBC Bay Area*, January 11, 2012, https://www.nbcbayarea.com/news/local/Oakland-Cops-Busted-Disciplined-for-Hiding-Nametag-During-Occupy-Protest-137125768.html.

[12] American Civil Liberties Union of Washington (2000). *Out of Control: Seattle's Flawed Response to Protests Against the World Trade Organization.*

[13] "MPD Says Tape Over Officer's Name Badges at Trump Protest was a Violation of Policy," *CBS 58 MDJT Milwaukee,* April 5, 2016, https://www.cbs58.com/news/mpd-says-tape-over-officers-name-badges-at-trump-protest-was-a-violation-of-policy.

lawsuits have been filed against the St. Louis Police Department due to their behavior during the protest. One of the attorneys involved in filing the suits said that text messages sent by the officers "confirm our suspicions that these officers were using the anonymity of their SWAT uniforms and face masks after removing their name tags so that they could beat citizens with impunity."[14]

- In 2017, seventeen Wisconsin State Troopers were sent to North Dakota to assist in the response to protests against an oil pipeline. Although the Troopers ordinarily wear nametags on their uniforms, they were directed by their own department leadership to remove their nametags when policing the protests. A representative of the Wisconsin Civil Liberties Union objected that not wearing nametags constitutes "an implicit threat that police will engage in practices for which they do not want to be held accountable."[15]
- In 2017, some Virginia State Troopers concealed their cloth name strips during a pro-Confederate rally, an act that violated Virginia State Police policy.[16]

Although policies and legal regulations vary widely, the typical practice among U.S. police agencies is for uniformed officers to wear a nametag and/or a unique identification number. This approach fosters accountability, professionalism, and confidence in the police. Some departments are addressing concerns about 'outing' or 'doxing' by allowing officers to wear identification numbers on their uniforms instead of nametags. This is not common practice and is typically only allowed in specific circumstances as seen in Baltimore and Milwaukee.

Reiterating the strongly worded language from the Civil Rights Division of the U. S. Department of Justice, "The failure to wear name plates conveys a message to community members that, through anonymity, officers may seek to act with impunity." Such actions undermine public confidence in the police and add fuel concerns regarding police legitimacy. Those concerns exacerbate police-community relationships and therefore may place officers at an even greater risk.

[14] Friedersdorf, C. (2018). Sadism in the St. Louis Police Department. *The Atlantic* (December 3).
[15] Defour, M. (2017). State Patrol Troopers in North Dakota not wearing name tags. *The Journal Times* (February 26).
[16] Alix Bryan, "State Troopers will not Cover Name Tags Again, Superintendent Promises," *CBS 6 News*, October 11, 2017, https://wtvr.com/2017/10/11/state-troopers-will-not-cover-name-tags-again-superintendent-promises/.

Wearing of Masks During Protests

In the United States, there are no national laws regulating the wearing of masks in public. The first anti-mask law in the United States was enacted by New York State in 1845 to address concerns arising from tenants disguised as Native Americans and protesting violently against property owners.[17] Other state laws followed decades later in response to the Ku Klux Klan, a white supremacist group that wears masks or hoods to disguise their identity. At present, approximately 15 states[18] have enacted statutes regulating the wearing of masks in public.[19] The majority of these laws include exceptions for age, health, holidays, or other reasonable circumstances. Anti-mask regulations are often enacted at the local level in the form of county or city ordinances.

Historical Context of Anti-Mask Laws

While the U.S. Supreme Court has remained silent on the issue of masks specifically, the Court has repeatedly addressed the issue of protecting anonymity and free expression as related to the First Amendment of the U.S. Constitution. These rulings have created a legal precedent for existing anti-mask laws to build upon.[20] One of the most important of these cases, *United States v. O'Brien*, established the *O'Brien* test for laws challenged under the First Amendment. This test requires that "a challenged law be unrelated to the suppression of free expression" and is satisfied if "the government is concerned solely with the prohibited conduct itself and not the conduct's communicative content."[21] This has been an important distinction for the majority of cases challenging anti-mask laws.

Appendix N provides examples of anti-mask laws in Washington, DC, Virginia, and California. As these laws illustrate, there is overlap among statutes, but also a degree of variation among them as well. Where some states/localities give elaborate detail about the context under which a mask or disguise can or cannot be worn, others are much more-vague. Various reasons are provided for these laws, with some focusing on the intent to conceal identity generally, others on the intent to deprive civil rights, and still others focusing more narrowly on the criminal intent of the mask wearer. These

[17] Margot E. Kaminski, *Real Masks and Real Name Policies: Applying Anti-Mask Case Law to Anonymous Online Speech*, 23 Fordham Intell. Prop. Media & Ent. L.J. 815 (2013), available at: http://scholar.law.colorado.edu/articles/286.

[18] The following states have some type of anti-mask law on the books. Included in parentheses is the year the law was enacted, if known: Alabama (1949); California (1872); Connecticut (2011); Delaware (1953); Florida (1951); Georgia (1951); Louisiana (1986); Massachusetts; Michigan (1931); Minnesota (1963); New York (1845); North Carolina (1953); North Dakota (2017); Ohio (1953); Virginia (1950); West Virginia.

[19] Stephen J. Simoni, "Who Goes There?" -- Proposing a Model Anti-Mask Act," *Fordham Law Review* 61, no. 1 (1992): 241–274.

[20] Kaminski, *Real Masks and Real Name Policies*.

[21] Simoni, *Who Goes There?"*

distinctions become especially important when anti-mask laws are challenged in court. Court cases challenging anti-mask laws typically cite violations against the First Amendment to the U.S. Constitution, arguing that masks are a form of protected "speech" or expression. In cases where anti-mask laws have been overturned, the consensus is that the state must "prove a connection between anonymity and bad behaviour, in order to show a substantial government interest regulating anonymity."[22]

Two important rulings have noted that an individual's fundamental right to free speech and expression can at times only be guaranteed through anonymity. In *Aryan v. MacKey* (1978) and *Ghafari v. Municipal Court for City and County of San Francisco* (1978), courts in Texas and California heard arguments related to the masking of Iranian nationals protesting the government of Iran. Both courts ruled that anti-masking laws were unconstitutional. The *Ghafari* case significantly narrowed the scope of existing anti-masking laws in the state of California, where a more precisely defined regulation is still in place today.[23] The judge in the Texas case found that wearing masks was permissible given students' fear of reprisal if their anonymity was not protected and because the masks had become symbols of protest against the Iranian government.[24] In both cases, the potential for violence during protest events was cited as a rationale for banning masks. Both courts ruled that those fears were unfounded. In fact, despite violence erupting during recent similar protest events, the Texas judge found that "officials have offered no concrete proof that these students in this demonstration will erupt into the violence that the no-mask regulation is supposed to prevent."[25]

Similarly, the same anti-mask laws established to protect individuals from being terrorized by the Ku Klux Klan have ironically been successfully challenged by Klan members to protect their own anonymity due to safety concerns.[26] The Klan has also successfully challenged laws in Tennessee where courts have found that banning masks during parades or demonstrations suppresses symbolic expression. In Florida, anti-mask laws were found to be so broad that issues of constitutional rights

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[22] Kaminski, Real Masks and Real Name Policies, 862.
[23] See Appendix A for California's antimasking penal code.
[24] Aryan v. MacKey, 462 F. Supp. 90 (N.D. Tex. 1978), https://law.justia.com/cases/federal/district-courts/FSupp/462/90/2142290/.
[25] Ibid.
[26] *Church of American Knights of Ku Klux Klan v. Kerik*, 232 F. Supp. 2d 205 (S.D.N.Y. 2002), https://law.justia.com/cases/federal/district-courts/FSupp2/232/205/2521217/; *American Knights Ku Klux Klan v. Goshen*, Indiana, 50 F. Supp. 2d 835 (N.D. Ind. 1999), https://law.justia.com/cases/federal/district-courts/FSupp2/50/835/2332659/

were never even raised because the court found the laws to be "susceptible of application to entirely innocent activities."[27]

These cases illustrate a precedent in the United States that calls into question the constitutionality of anti-mask laws. This is especially true in cases where mask restrictions are not narrowly defined. Across the states and municipalities that have ruled on this issue (even those that have ultimately decided to uphold such restrictions), courts often find that anti-mask laws are too broad.[28]

Court rulings in favour of anti-mask laws have often done so citing three main findings: (a) such laws regulate conduct instead of speech; (b) masks do not qualify as freedom of expression; or (c) the connection between anonymity and free speech is lacking.[29] In nearly all of the rulings in which anti-mask laws have been upheld, courts have significantly narrowed the scope of these laws – further emphasizing that many of the original anti-mask laws lack specificity, thus leaving them open to interpretation, lawsuits, and in general conflict with constitutional rights.

The state of New York ruled in favour of anti-mask laws in the *People v. Aboaf* (2001) and *Ku Klux Klan v. Kerik* (2004). In the former, the state ruled that masks could be banned only if they were not being worn for a legitimate purpose. In the latter case, however, the Second Circuit Court of Appeals noted that the Supreme Court "never held that freedom of association or the right to engage in anonymous speech entails the right to conceal one's appearance in a public demonstration."[30] This represents a drastically different ruling from previous cases connecting First Amendment rights with anonymity. The court in the *Kerik* case did not find a connection between mask-wearing and symbolic speech, citing a similar case in Virginia, where Klan members were banned from wearing masks in public.[31]

These case-law examples underscore the various ways that anti-mask laws have been interpreted across courts in the United States, with varying degrees of consensus about what is permissible. At the heart of this debate is the connection between mask wearing and constitutional rights, questions of intent and criminality, and acknowledging the government's right to intervene in issues of substantial interest. Caught in the middle of this debate are the law enforcement officers challenged with maintaining law and order in the communities they serve.

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[27] Kaminski, *Real Masks and Real Name Policies*, 858.
[28] Ibid, 847.
[29] Ibid, 2013.
[30] Ibid, 865.
[31] Ibid.

Current Anti-Mask Debate and the role of Police

Despite the court cases cited above, anti-mask laws are rarely enforced in the United States and typically only applied as a secondary offense. When applied, these laws are often criticized for being "old" or "outdated" and cases can be difficult to prosecute. However, the debate on the need for such laws has reignited given recent protest events related to racial unrest, police brutality, corporate greed, environmental concerns, and other social issues. Such laws have been applied sparingly in recent years to arrests made during Occupy Wall Street demonstrations[32] and ironically against counter protesters at KKK rallies.[33] Those arrests have not come without controversy.

States with anti-mask laws on the books provide police the ability to regulate mask wearing to some extent. However, as our review of court cases demonstrates, those enforcement capabilities are not limitless and typically favour mask wearing absent very narrowly defined restrictions. In most cases and in most states, police officers do not have the discretion to request that masks be removed. In states where anti-mask laws exist, much of the controversy lies in the power struggle that ensues when law enforcement officers ask protesters to remove their masks. Because anti-mask laws are not commonly enforced or well known, many individuals are unaware that such laws even exist. As a result, they may be confused or upset when asked to remove their masks. More experience protesters are often acutely aware of such laws and may use them to bait police officers into making controversial arrests that call into question the law's constitutionality.

In response to recent protest events, some states have successfully passed new anti-mask laws, including Arizona (2018)[34] and Nebraska[35] (2017). Other states have attempted to pass similar restrictions but have failed – these include Kansas, Indiana, Kentucky, Missouri, Ohio, and Washington. Many of these bills have focused specifically on masks at protest events. For example, House Bill No. 2612 in Kansas would have made it illegal to wear a mask during any public demonstration.[36] That bill died in committee in 2018. Massachusetts introduced a similar bill in early

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32 Sean Gardiner and Jessica Firger, "Rare Charge is Unmasked," *Wall Street Journal* A17, September 2011.

33 Meagan Flynn, "Georgia Police Invoke Law Made for KKK to Arrest Anti-Racism Protesters," *The Washington Post*, April 23, 2018, https://www.washingtonpost.com/news/morning-mix/wp/2018/04/23/georgia-police-invoke-anti-mask-law-made-for-kkk-to-arrest-racism-protesters/.

34 Howard Fischer, "Wearing Mask in Public to Become Illegal Under Proposed Law," *Arizona Capitol Times*, November 27, 2017, https://azcapitoltimes.com/news/2017/11/27/wearing-mask-in-public-to-become-illegal-under-proposed-law/.

35 Sixty-Fifth Legislative Assembly of North Dakota, House Bill No. 1034, January 3, 2017, https://www.legis.nd.gov/assembly/65-2017/documents/17-0311-04000.pdf

36 Kansas Legislative Sessions, House Bill No. 2612, May 4, 2018, http://www.kslegislature.org/li_2018/b2017_18/measures/hb2612/.

2019 that has yet to be voted on.[37] In Portland, Oregon, the police chief is rallying for such legislation after violent clashes between Antifa protesters and the Portland police.[38] The successes and failures of these various legal efforts underscore the controversial nature of creating anti-mask laws and defining the contexts in which they are enforceable.

These controversies make it exceedingly difficult for police in anti-mask law states to understand the appropriate application of such laws. More importantly, absent clear and concise guidelines from front-line supervisors regarding anti-mask law enforcement, officers are largely left to their own discretion when requesting removal of masks and making subsequent arrests. That discretion can often result in combative interactions between protesters and police as seen most recently in Georgia, where officers pointed guns at protesters and demanded that they removed their masks.[39]

Despite much ambiguity, the one thing that does appear consistent across legislative, courtroom, and law enforcement experiences with anti-mask laws is that narrowly defined scopes of application are of critical significance. Police officers tasked with applying these laws will continue to bear the burden of ensuring that such laws are as narrowly enforced in practice.

Conclusions

At present, the U.S. federal government allows states to dictate their own boundaries on the issue of wearing masks in public. Just last year, Federal Bill HR 6054 (also known as the "Unmasking Antifa Act of 2018") was proposed to criminalize any masked, or disguised individual who "injures, oppresses, threatens, or intimidates any person" exercising rights or privileges afforded to them by the U.S. Constitution.[40] The bill was a dead-end, expiring at the close of the 115th Congress on January 3, 2019. The existence of this bill illustrates the importance of the anti-mask issue given the current political climate, both nationally and abroad. The fact that it was not addressed in Congress speaks to the government's reluctance to create nationwide legislation on this issue. One particular U.S. court ruling, deciding against anti-mask laws, offers some guiding wisdom:

[37] The Commonwealth of Massachusetts, One Hundred and Ninety-First General Court, House Docket No. 2369, Bill H.1588, January 17, 2019, https://malegislature.gov/Bills/191/HD2369.

[38] Ray Sanchez, "Portland's Police Chief Calls for an Anti-Mask Law Following Violent Protests," *CNN*, July 4, 2019, https://www.cnn.com/2019/07/04/us/portland-police-chief-mask-ban/index.html.

[39] Flynn, "Georgia Police Invoke Law Made for KKK."

[40] U.S. Congress, House of Representatives, One Hundred and Fifteenth Congress, 2nd Session, H.R. 6054, June 8, 2018, https://www.congress.gov/115/bills/hr6054/BILLS-115hr6054ih.pdf.

"The choice is not between order and liberty. It is between liberty with order and anarchy without either."[41]

Anti-mask laws in the United States will continue to evolve as state and local courts temper the delicate balance between upholding constitutional rights and addressing compelling state interests.

[41] *Church of American Knights of Ku Klux Klan v. Kerik.*

Canada

Police Identification During Protests

Canadian law regarding the requirements of officers to wear and/or display identification upon request is unique to each Province. However, unlike policies in the United States, which almost unanimously favour officer names as part of the uniform requirement, Canadian Provinces vary with some requiring officer names and others requiring unique badge ID numbers only.

Beginning in 2006, police officers in Toronto were mandated to wear badges on their uniforms displaying their last name and first initial, replacing previously used badge ID numbers. The union representing Toronto police officers challenged this requirement, citing claims that nametags would place officers at risk for harassment or retaliation.[42] Those challenges were unsuccessful. When reviewing the case, the Ontario Labour Relations Board did not find the union's claims to have merit.[43] Similarly, officers in the cities of Edmonton and Calgary (located in the province of Alberta), Vancouver (province of British Columbia), Montreal (province of Quebec), Regina (province of Saskatchewan), as well as the Royal Canadian Mounted Police (RCMP) and the Ontario Provincial Police (OPP) are all required to wear nametags.[44]

City administrators in Winnipeg (province of Manitoba) decided against wearing nametags after the Police Chief noted, "due to the nature of their job, police officers are routinely threatened and intimidated, and forcing them to wear name tags would jeopardize their safety even more."[45] The Chief argued that displaying and providing officer badge numbers upon request allowed for sufficient means of identification.

In perhaps one of the country's most notorious cases in dealing with this issue, dozens of officers were found to have removed their identification badges from their uniforms during the 2010 G-20 Summit in Toronto and the 2010 G-8 Summit in Huntsville, Ontario. Nearly 100 officers were

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[42] *Toronto Police Association v. Toronto Police Services Board and Christopher Lynch*, Ontario Labor Relations Board, 3382-06-HS, December 20, 2010, https://www.canlii.org/en/on/onlrb/doc/2010/2010canlii76072/2010canlii76072.pdf.
[43] Peter Small, "Police Union Loses Bid to End Mandatory Name Tags," *The Star*, February 1, 2011, https://www.thestar.com/news/crime/2011/02/01/police_union_loses_bid_to_end_mandatory_name_tags.html.
[44] Harvey Simmons, "Police Name Tags," *The Globe and Mail Canada*, July 6, 2006, https://www.theglobeandmail.com/news/national/police-name-tags/article1105168/; "Committee Nixes Police Name Tags," *CBC News,* January 9, 2006, https://www.cbc.ca/news/canada/manitoba/committee-nixes-police-name-tags-1.598428.
[45] "Committee Nixes Police Name Tags," *CBC News,* January 9, 2006, https://www.cbc.ca/news/canada/manitoba/committee-nixes-police-name-tags-1.598428.

disciplined as a result.[46] In a report to the Canadian House of Commons regarding security issues at the G8 and G20 summits, members of the committee reviewing the actions of the police stated that they "deplor[ed] the fact that some 90 TPS officers had removed their name tags, in direct violation of a directive to the contrary from Chief of Police William Blair."[47]

As these examples illustrate, the nation of Canada is not unanimous in its requirements for name identification on police officer uniforms. While a majority of Canadian cities and provinces appear to favour the use of officer nameplates, others find badge ID numbers to be a sufficient means of identification that acknowledges the security concerns raised by officers. Despite the type of identification used, most agencies in the United States and Canada appear firm in their collective belief that is it an act of police misconduct worthy of disciplinary action to hide an officer's identification, especially in cases of policing protest events.

Wearing of Masks During Protests

Canada has taken a much less ambiguous and hard-lined approach to anti-mask laws. In 2013, Canada's Parliament enacted a national anti-mask law following several high-profile protests and riots, including violent incidents during the G-20 summit in Toronto and Stanley Cup riots in Vancouver. The national law bans wearing "a mask or other disguise to conceal one's identity while taking part in a riot or an unlawful assembly."[48] Those convicted of violating the law could face up to 10 years in prison.

When the national anti-mask law was passed, Canada already had a separate provision regulating the use of disguises. Under that law, "Everyone who, with intent to commit an indictable offence, has his face masked or coloured or is otherwise disguised is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years."[49] Most typically applied to masked robberies, the

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[46] Marianne Takacs and Kate Allen, "90 Officers Facing Disciplinary Action for Hiding their Identity at G20," *The Star*, November 4, 2010, https://www.thestar.com/news/gta/g20/2010/11/04/90_officers_facing_disciplinary_action_for_hiding_their_identity_at_g20.html.

[47] Standing Committee on Public Safety and National Security, *Issues Surrounding Security at the G8 and G20 Summits*, House of Commons Canada, 40th Parliament, 3rd Session, March 2011, http://publications.gc.ca/collections/collection_2011/parl/XC76-403-1-1-04-eng.pdf.

[48] *Preventing Persons from Concealing Their Identity during Riots and Unlawful Assemblies Act*, SC 2013, c. 1 (Canada), https://laws-lois.justice.gc.ca/eng/annualstatutes/2013_15/page-1.html.

[49] *Disguise with Intent*, RS, 1985, c. C-46, s. 351 (Canada), https://laws-lois.justice.gc.ca/eng/acts/C-46/section-351.html.

original law was often criticized as being too difficult to apply during protests and riots because of its "intent to commit an indictable offense" provision. The national law sought to lessen this ambiguity.

A thorough House debate on the national anti-mask law, the contents of which can be found online, delved into the reasoning behind its introduction, the need for police to better respond to potentially harmful acts of protestors and rioters, and how the law would maintain constitutional rights to freedom of expression.[50] What these debates clearly illustrate is a steadfast desire for the law to make protest events safer for those seeking to exercise their constitutional rights by narrowly focusing on only those members of the group seeking to engage in "provocative vandalism and violence."[51] As noted by one member of the House during these debates:

"the new bill would not target people who wear masks or costumes that may conceal their identity while they are engaged in lawful protests, marches, gatherings or other activities commonly associated with the exercise of freedom and expression of lawful assembly…This would affect people, when the riot act has been called, who don a mask to conceal their identity."[52]

This law is narrowly defined as a result of making mask wearing a criminal act only when a riot or unlawful assembly has been declared. Despite its passing into law, opposition to the bill still centered around limitations on freedom of expression, mirroring many of the same concerns raised by those opposed to such laws in the United States.[53]

In recent years, the province of Quebec has attempted to ban full or partial face coverings of anyone delivering or receiving public services, to include teachers and government employees among others. This law has been widely criticized as targeting Muslim women but would also be applicable to protesters.[54] The law, and its variations, has been suspended on multiple occasions in Quebec's Superior Court, citing violations to freedom of religion under the country's Charter of Rights and

[50] *Preventing Persons from Concealing Their Identity during Riots and Unlawful Assemblies Act,* Bill C-309 Historical, September 2013 (Canada), https://openparliament.ca/bills/41-1/C-309/?tab=major-speeches
[51] Blake Richards, *Preventing Persons from Concealing Their Identity during Riots and Unlawful Assemblies Act*, House Debate, Canadian House of Commons, October 29, 2012, https://openparliament.ca/bills/41-1/C-309/?tab=major-speeches.
[52] Michelle Rempel, "Preventing Persons from Concealing Their Identity during Riots and Unlawful Assemblies Act" House Debate, Canadian House of Commons, February 8, 2012, https://openparliament.ca/bills/41-1/C-309/?tab=major-speeches.
[53] Megan Fitzpatrick, "Wearing a Mask at a Riot is Now a Crime," *CBC News,* June 19, 2018, https://www.cbc.ca/news/politics/wearing-a-mask-at-a-riot-is-now-a-crime-1.1306458.
[54] Ashifa Kassam, "Quebec Passes Law Banning Facial Coverings in Public," *The Guardian*, October 18, 2017, https://www.theguardian.com/world/2017/oct/18/quebec-passes-law-banning-muslims-from-wearing-face-coverings-in-public.

Freedoms.[55] The fact that this law was received with such criticism and overruled on multiple occasions stresses the need for anti-mask laws to be narrowly tailored to a specific and compelling government interest.

Unlike the United States, Canada does not have a historical precedent of anti-mask laws rooted in racism. As a result, the country has taken an opposite approach to that of the United States, regulating mask wearing across the country as a whole, rather than leaving it up to individual provinces to decide themselves. Despite this difference, anti-mask laws in both countries have raised issues associated with freedom of expression, attempting to balance those rights against safety and security concerns of the government. The more details these laws provide about the context in which they can be applied, the more likely they are to adhere to this balance and bear scrutiny.

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[55] Benjamin Shingler, "Judge Suspends Quebec Face-Covering Ban, Says it Appears to Violate Charter," *CBC News,* June 28, 2018, https://www.cbc.ca/news/canada/montreal/quebec-bill-62-face-covering-july1-1.4724863.

United Kingdom

Police Identification During Protests

There is no UK legislation, Home Secretary issued Code of Practice, or Home Office guidance that requires officers policing protest to display any personal identifiers. The displaying of identification numbers by police officers in the UK is not required by legislation and is instead at the discretion of the individual chief constable who may provide force level guidance.[56] Once required by force policy, the failure of an officer to comply will be a disciplinary offence, falling under the Police (Conduct) Regulations 2008. The lack of legislation has not come without criticism. In 2009 the Joint Committee on Human Rights recommended that the requirement to display identification numbers be placed on a statutory footing[57] and the Home Office considered legislating to this effect in the same year.[58] There was also a failed attempt to insert an amendment to make it law into the Policing and Crime Bill 2009.[59]

However, national guidance has been provided to all forces by the College of Policing. Their 2017 'Standards of Appearance' guidance[60] notes that, 'insignia/epaulettes must be worn and visible at all times' for uniformed officers, with no exception highlighted for officers policing protest or disorder. As it is non statutory guidance it is a matter for local chief constables whether it is accepted or not.

The Guidance in the UK has developed in the wake of perceived failure of some officers to wear their identifiers correctly which has repeatedly emerged as a salient public concern in the immediate aftermath of major disturbances and their formal reviews[61]. Whilst this guidance carries less weight than Authorised Professional Practice[62] it has clearly gained traction, with most UK forces updating their policies to reflect the national College of Policing guidance on the wearing of individual identifiers when in uniform - Merseyside Police, Police Scotland, and Nottinghamshire Police are examples of forces that have aligned local policies.

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56 Parliamentary Under-Secretary of State for the Home Office (Hansard, Lords 29 April 2009, Vol. 710).
57 Demonstrating A Respect for Rights? HL Paper 47-I HC 320-I (2009, London: The Stationary Office)
58 Hansard, Commons, 7 July Vol. 495
59 Hansard, Lords, 20 October 2009 Vol 713.
60 http://recruit.college.police.uk/Officer/Documents/Appearance_Standards_GuidanceDocument.docx
61 See In Her Majesty's Inspectorate of Constabulary's 2009 report Adapting to Protest – Nurturing the British Model of Policing, which looked at the 2009 G20 summit protest policing, which had many issues of officers failing to display their identification numerals correctly, they also comment that there were similar problems during the miners dispute (1984/5), at Wapping (1986/7), and the Countryside alliance pro-hunting demonstration (2004).
62 https://www.app.college.police.uk/about-app/

For example, Police Scotland – the UK's second largest police force - in their 2017 'Uniform Appearance Standards SOP' state at paragraph 6.2.1 that 'epaulettes displaying a divisional shoulder number (divisional letter and number) and / or rank insignia must always be displayed and worn by all uniformed officers to facilitate identification at an operational level and by members of the public.'[63] They also recognise at 6.2.2 there is a balance to be struck between police accountability for their actions and officer safety when they say, 'if required by a member of the public to provide information as to their identity officers must balance the need for accountability and that of Officer Safety, and on request provide their shoulder number.'

Authorised Professional Practice (APP) is authorised by the College of Policing as the official source of professional practice on policing. Police officers are expected to have regard to APP in discharging their responsibilities.[64] There is a specific Public Order APP[65] which alongside the College of Policing's licencing of public order training centres and responsibility for the public order training curriculums combines to ensure that all public order officers and commanders work to the same doctrine and are interoperable, whichever police force they come from. The College of Policing works very closely with the National Police Chiefs' Council Business Area lead for public order (NPCC) to ensure complete alignment with the current operational needs. The NPCC lead on guiding forces on public order uniform, equipment and other arrangements that facilitate greater interoperability, seeking consensus and agreement from all forces through a regional and national meeting structure.

Whilst the Public Order APP is silent on how officers' identifiers are displayed on their public order uniforms the training curriculum is not. In the College of Policing Public Order Training Manual Module G3 (2018)[66] at paragraph 3.7.2 they state that helmet markings must be 'visible from all directions', whether the visor is up or down. The markings must include the officers Force Identifier (each has a unique 2 digit identifier; for example, West Midlands Police is YM); their rank insignia (Two 'pips' for an inspector, 'crown' for a superintendent, etc); and their officer identification number (often referred to as their collar number). At paragraph 3.7.3 they specify that the size and font of these markings: 50mm high Arial Bold for the force identifier; 35mm for the rank insignia; and 25mm

[63] https://www.scotland.police.uk/assets/pdf/151934/184779/uniform-appearance-standards-sop
[64] https://www.app.college.police.uk/about-app/
[65] https://www.app.college.police.uk/app-content/public-order/
[66] https://www.whatdotheyknow.com/request/535605/response/1283809/attach/4/FOIA%202018%200097%20disclosure.pdf?cookie_passthrough=1

for the officer's numbers. All these should be in yellow, with a dark blue background. The pictures below, copied from the Module G3 manual, show how these markings should look.



Figure 1: NATO style helmets with clear identifier codes for each individual officer.

At paragraph 3.8.1 the training manual is clear who is responsible for ensuring these identification markings are in place. This paragraph states, 'it is the responsibility of all officers and supervisors to ensure that all officers display their rank, identification and role'. This position is then supported by local policies, like the Police Scotland stand operating procedure commented upon above and the Merseyside Police 2018 policy[67] which states at Paragraph 2.5.1 'numerals or insignia/epaulettes of rank or post, must be worn and visible at all times. Epaulettes indicating the function/role that the wearer is performing must be displayed.' Consequently, officers are responsible for ensuring their helmet is properly marked with their identifiers and that they display their epaulettes on the shoulders of their uniform. Within the Merseyside Police policy there are pictures to illustrate the standard of appearance they expect, which are copied below. All could be present during the policing of a protest, with increased protection for the officer as the risks they face increase, with Code 3 offering the greatest protection.

[67] https://www.merseyside.police.uk/SysSiteAssets/foi-media/merseyside/policies/dress-and-appearance.pdf



Figure 2: Three levels of uniform for public order policing offering increasing levels of officer protection

UK policing also uses different coloured epaulettes during public order policing to clearly show, predominantly to colleagues, during deployments the role that they are performing (usually rather than their rank). All forces use the same colour coding to ensure interoperability when deploying with

officers from multiple force areas. Below are some examples, yellow denoting a 'Bronze' commander, red a 'PSU Inspector', white a PSU 'Sergeant' and blue 'Police Constable'[68]



Figure 3: Coding schemes signifying differing command levels operable during public order events.

In HMIC's 2009 report into the G20 protest policing, Adapting to Protest,[69] the identification of officers was highlighted as a key concern (Page 7), with HMIC saying 'although the over whelming majority of officers were correctly dressed, any lack of police identification is an inhibiter to accountability and generates a question mark about the control of staff … particularly when the use of force is a possibility' (page 9). Ensuring officers wear numerals or other clear identification was a key HMIC recommendation, accepted by the Metropolitan Police, recognising its importance for police accountability and to help earn the trust and confidence of those they are policing. This theme continues to be widely recognised in current standards of appearance policies and many forces now require officers to additionally have their surname displayed on the chest of their uniform or on their epaulettes – West Midlands Police, Leicestershire Police and Nottinghamshire Police all pursue this approach.

However, there is also recognition that some officers are anxious about their identity being so accessible, with concerns that they may be targeted by criminals, or worse, their families may be at risk. The UK is well rehearsed at managing threats to officers, with the enduring and significant threat from the IRA to officers in Northern Ireland and, more recently, the threat Daesh posed to police officers on the mainland. However, the response from police forces, including in Northern Ireland,

[68] https://www.flickr.com/photos/westmidlandspolice/albums/72157631318960014/with/7893297214/
[69] https://www.justiceinspectorates.gov.uk/hmicfrs/media/adapting-to-protest-20090705.pdf

has not been to retreat from officers wearing their epaulettes, and even name badges. Instead, they very actively through proactive policing approaches address the cause of the threat and simultaneously develop policies and practices for officers to follow to make intrusion into their private lives much more difficult. For example, advising officers to take all reasonable steps to ensure their police activities and their private lives are not blended at all on social media, or forbidding officers to travel to and from work in any police uniform. These approaches ensure officers and their families are kept safe, whilst the displaying of their epaulettes ensures policing is accountable and capable of holding the confidence of the communities they serve.

Wearing of Masks During Protests

UK – anti-masking legislation and police practice

The default position is that police officers in the United Kingdom possess no right to demand that members of the public remove items that are covering all or part of their face. An officer is permitted to *ask* members of the public to do this,[70] but they have no legal obligation to comply with the request.

Stop and Search

The Police and Criminal Evidence Act 1984 sets out the rules on stopping and searching suspects who are "reasonably suspected" of possessing a stolen or prohibited article. PACE s.2(9)(a) only permits an officer conducting a stop and search in public to remove "outer coat, jacket, or gloves", thereby excluding any facial covering.[71] Further, s.1(7) PACE appears to exclude facial coverings in the articles for which an officer can search without a warrant. The section limits searches to prohibited articles, including those "made or adapted for use in the course of or in connection with an offence." However, the offences to which this subsection applies are limited and the intention is to allow searches for items directly connected with these criminal offences (for example, crowbars to assist burglaries, fake bank cards for fraud, petrol bombs for criminal damage).

Terrorism Act Searches in Specified Areas of Places

The situation is different where a senior officer believes an act of terrorism will take place and gives an authorisation under s.47A of the Terrorism Act 2000 to allow

[70] This is subject to their obligations under the Equality Act 2010 not to discriminate on the grounds of religion. PACE Code of Practice A, Note 7 sets out the principle that when carrying out a stop and search an officer may ask for a face covering to be removed.

[71] However, if an officer has reasonable grounds to do so they may remove headgear out of view of the public (for example in a police van). Similar powers exist with regard to stop and search under s.43 of the Terrorism Act 2000.

search powers to be extended for a particular locality for as long as is necessary to prevent the act. An officer exercising this power conferred is, by virtue of Schedule 6B, allowed to require the person being searched to remove their "headgear", which presumably could include any facial covering.[72] Under the Northern Ireland (Emergency Provisions) Act 1996 s.35, it was previously an offence to wear a mask or hood in a public place for the purpose of concealing identity. This provision was repealed when the Terrorism Act 2000 took effect.

Section 60 Search Authorisations and the s.60AA Power to Require Removal of Face Coverings

Section 60 of the Criminal Justice and Public Order Act 1994 was primarily introduced as a response to organised group criminality such as fox hunt saboteurs. It extended stop and search by allowing a senior officer of inspector or above[73] to authorise extended search powers where s/he believes that incidents involving serious violence may take place in any locality in the relevant police area or where such incidents have occurred and a weapon or dangerous instrument may still be carried. The s.60 authorisation will be limited to a designated area for a period not exceeding 24 hours. The extended powers mean that officers in the area may stop and search any individual for a dangerous instrument or offensive weapon and seize any found regardless of their own individual grounds for suspecting the individual is carrying the item.

The Crime and Disorder Act 1998 extended the power under s.60 to allow officers to require a person to remove any item which the constable reasonably believed that person was wearing wholly or mainly for the purpose of concealing their identity, where a senior officer had given a s.60 authorisation based on the reasonable belief that incidents involving serious violence may take place in the locality.[74] The Anti-Terrorism Crime and Security Act 2001 subsequently repealed s.60(4A) and introduced s60AA into the Criminal Justice and Public Order Act 1994. S.60AA grants officers the power to require the removal of "disguises" where a s.60 authorisation is in place and limited to that locality and time period.[75] This means that any uniformed officer can "require any person to remove any item which the constable reasonably believes that person is wearing wholly or mainly for the purpose of

[72] A similar power under ss.44-45 was repealed
[73] National and force-level policy has been used to raise the level of authorisation to Superintendent or above but the law has not been changed.
[74] Crime and Disorder Act 1998 s. 25.
[75] s.60AA(1)

concealing his identity"[76] and to seize that item.[77] Additionally, s.60AA(3) permits an officer of inspector level or above to grant a s.60AA authorisation where s/he reasonably believes "that activities may take place in any locality in his police area that are likely… to involve the commission of offences." This allows the power to require the removal of facial coverings to be permitted in a certain locality for a limited period of 24 hours without the normal s.60 requirements with regard to serious violence or the presence of offensive weapons.[78] The authorisation under s.60AA(3) should normally be given in writing but the Police and Crime Act 2017 allows oral authorisation to be granted where written authorisation is not practicable.[79] S.60AA(4) permits an officer or superintendent level or above to extend this power for an additional 24 hours if s/he believes the threat is still posed and the power is expedient to meet it.

A person who fails to remove an item when required to do so under s.60AA will be committing a summary offence and will be liable to imprisonment for a term not exceeding one month and/or a fine not exceeding level 3 on the standard scale (currently £1,000). S.60AA applies to England, Wales, and Northern Ireland, but although s.60 was incorporated into Scottish law in 1997,[80] s.60AA does not apply.[81] PACE Code of Practice A makes it clear that s.60 does not provide a police power to stop and search for disguises, but that if one is being carried, or is discovered during a search for something else, an officer reasonably believes it is intended to be used to conceal someone's identity has the power to seize it.[82]

Importantly, s.60AA does not make it a criminal offence to wear facial coverings for any reason even where a s.60 authorisation is in place, it only makes it an offence to refuse to remove a disguise when requested. Furthermore, an officer can only require the removal of a facial covering where they reasonably believe the item is being covered wholly or mainly to disguise the identity of the individual. If the item is being worn for *other reasons* (e.g a hijab for religious reasons), the fact that it has the *effect*

[76] s.60AA(2)(a)
[77] This is not classified as a search so an officer exercising the power does not need to comply with the procedural rules set out in PACE and the Codes of Practice (*DPP v Avery* [2001] EWHC Admin 748).
[78] This lowering of the threshold for use of the power was subject to scrutiny and critique by MPs, notably on the grounds of concerns around infringements with religious freedom and the inclusion of standard police powers in a bill regarding terrorism. The Minister stated that the lowered threshold was required due to the increased use of facial coverings, prompting questions from MPs as to whether sufficient evidence had been provided to demonstrate that police required the lowered threshold.
[79] s.60AA(6A).
[80] Criminal Justice and Public Order Act 1994 s.172(8) as amended by the Knives Act 1997 s.8(11).
[81] S.60AA(11).
[82] Para 2.15.

of disguising identity does not allow the officer to require its removal. The College of Policing's Authorised Professional Practice on the removal of face coverings makes it clear that, "it is not enough that the covering does in fact conceal identity – there must be reason to believe that it is being worn at least partly for the purpose of disguise".

Governance and Oversight of Stop and Search

The powers of Section 60 and Section 60AA Criminal Justice and Public Order Act 1994 are subjected to considerable national oversight, with the statutory Code of Practice, the Authorised Professional Practice, the Best Use of Stop and Search Scheme and frequent inspection by Her Majesty's Inspectorate of Constabulary. Locally, each police force will implement its own policies and practices to ensure effective local implementation, within their local context, of the national requirements. The Police and Crime Commissioner, through their local governance processes and drawing on the local lay oversight of stop search use, would hold to account the chief constable for the use of stop search in the police area.

Conditions of Public Assemblies or Processions

The Public Order Act 1986 provides restrictions on assemblies and processions by requiring organisers to seek police permission, which in turn allows the police authority to apply conditions on the march or assembly where they foresee violence or disorder. This section allows a senior police officer to impose such conditions if they reasonably believe that a public procession may result in 'serious disorder, serious damage to property or serious disruption to the life of the community' or the purpose is to 'intimidate', as necessary to prevent such harms. These powers can be applied to a procession being held or one that is intended to take place. An offence is committed by a procession organiser, unless the circumstances are beyond their control, if the procession then fails to comply with a condition imposed, or to incite someone to breach such a condition. An organiser upon conviction they may be imprisoned for up to 3 months and receive a fine, whilst a participant can only be fined. It is important to note that while the organiser can be judged to have committed an offence, the procession itself would not then itself also be unlawful since the rights to freedom of peaceful assembly, expression and consciousness are protected under the Human Rights Act 1998.

Prima facie this could allow a condition of no facial coverings to be imposed. We are aware of no occasion where this has been a condition of the procession and the wording of the act has not been tested to this effect in court, but obiter from the High Court indicates that judges were likely to be

sympathetic towards such conditions where they were considered proportionate.[83] A Freedom of Information response[84] disclosed that on the 11 occasions the Metropolitan Police issued conditions under Section 12 of the Public Order Act 1986 between 2011 and 2015 all related to procession routes, which suggests police practice is restricted by the explicit reference to the procession route rather than the earlier wording in the Act which states 'such conditions as appear to him necessary to' prevent the anticipated harm. By exception though, in July 2019 the Metropolitan Police[85] did impose wider conditions on an Extinction Rebellion march, to the effect that they couldn't have any boat or vehicle on the procession or at the final destination. With regard to public gatherings (s.14 Public Order Act 1986 and Art. 4 Public Order (Northern Ireland) Order 1987/463), the legislation is drafted more narrowly, referring only to numbers of participants, locations and timing.

Case Law

There are no reported domestic court cases relating to the removal of facial coverings,[86] meaning that there is little to guide us in terms of statutory interpretation of either s.47 or s.60AA. Where facial coverings are mentioned in the higher and appeal courts it is usually in the context of other police powers, most usually arrests or containments to prevent a breach of the peace. Here the wearing of facial coverings has been typically taken into account by the court as a factor to indicate that the complainants were more likely to be involved in planned or previous disorder or violence. The lack of case-law in this area, is surprising, especially given the use of face coverings in sectarian marches and also protest events such as the Million Mask March.

Equality Act Considerations

Any restriction on the wearing of face coverings by the police in the UK must comply with the Equality Act 2010, which includes religion as a protected characteristic. This means that any requirement for face coverings to be removed should not mean that followers of any particular religion should be treated less favourably than others. This restriction exists in addition to the restrictions on requiring face coverings that have an unintended disguising effect considered above.

[83] Novartis Pharmaceuticals UK Limited v Stop Huntingdon Animal Cruelty [2009] EWHC 2716 (QB) at para.26
[84] https://www.whatdotheyknow.com/request/section_12
[85] http://news.met.police.uk/news/condition-imposed-on-extinction-rebellion-processions-in-london-376322
[86] Aside from the procedural case of DPP v Avery.

Proposed Extensions of Domestic Law

There have been two attempts via private members bills, to introduce further legislation concerning face coverings. Both proposed bills – the Face Coverings (Regulation) Bill 2010-2012 and the Face Coverings (Prohibition) Bill 2013-2014 - would have made it an offence, subject to exemptions, for a person to wear a garment or other object with the primary purpose to obscure the face in a public place. Each of these attempts failed to attract sufficient support to pass the second reading stage of the legislative process, with significant concerns raised by MPs regarding potential interference with religious expression, damage to community relations, and the conflation of criminal intent with legitimate religious expressions.[87]

Similarly, when the 2016 Policing and Crime Act was debated in Parliament, an amendment was proposed that would extend s.60AA powers to allow officers to demand someone remove their face covering if they believe an offence is being committed and the face covering is being used to hide their identity. The amendment was rejected after Policing Minister Mike Penning stated that he had received advice from the police that the extra power was unwanted.[88] The Police Foundation thinktank similarly expressed the view that no extension of the law on removal of face coverings was necessary, in their response to the Home Office consultation following the 2011 riots, *Police Powers to Promote and Maintain Public Order*. They argued that powers under s.60AA CJPOA were "perfectly sufficient to address large-scale disorder", that requesting the removal of face coverings during mass disorder was impracticable and that additional powers could be counter-productive. This view has support from some public order commanders who are mindful of both the practical difficulties of enforcing bans on face-coverings and also that enforcing such restrictions could raise tensions in public order situations.[89]

Human Rights Act

Section 6(1) of the Human Rights Act 1998 makes in unlawful for a public authority to act in a way that is incompatible with a right that exists under the European Convention on Human Rights. This means that when police authorities are making decisions on conditions of processions or

[87] For the texts of the proposed bills, and the relevant Parliamentary debates, see the following links: https://services.parliament.uk/Bills/2010-12/facecoveringsregulation/documents.html and https://services.parliament.uk/Bills/2013-14/facecoveringsprohibition.html

[88] https://www.policeoracle.com/news/uniformed_operations/2016/Jun/14/call-to-give-police-more-power-to-order-removal-of-masks-rejected_92103.html/specialist

[89] See the concerns of the Gold Commander in evidence submitted to the High Court in the case of *Novartis Pharmaceuticals UK Limited v Stop Huntingdon Animal Cruelty* [2009] EWHC 2716 (QB) at paras. 26 and 51.ii.

authorisations under s.47, s.60, or s.60AA they must ensure they are not disproportionately and unnecessarily breaching human rights. With regard to face coverings, the relevant rights that could be engaged are Article 9 (Freedom of Religion), Article 10 (Freedom of Expression), and Article 14 (Discrimination in Access to Rights). There is also the potential for Article 11 to be engaged if protesters believed they could not gather together without facial coverings due to potential repercussions from surveillance by the state. The Joint Committee on Human Rights has noted that the powers under s.60AA risk being seen as an unreasonable and disproportionate interference with people's dignity and rights under Articles 8 (Privacy) and 9 of the Convention, and therefore should be subject to careful scrutiny on human rights grounds.[90]

The College of Policing's Authorised Policing Practice

As has been previously stated the Public Order APP[91] draws together the legislation, guidance and inspection recommendations and ECHR considerations into a single, national source for public order policing in England, Wales and Northern Ireland. There is considerable emphasis within the Public Order APP to explicitly drawing in the ECHR considerations, with Articles 9, 10 and 11, being particularly pertinent when considering imposing Section 12 conditions upon a march or procession.

Public Order Training

All public order training, including command training, in England and Wales is delivered through training centres licenced by the College of Policing. Each course is delivered to a national curriculum designed to impart the public order APP, developed by the College of Policing and the National Police Chiefs' Council (NPCC). Continuous Professional Development of public order officers and commanders is similarly centrally coordinated by the College of Policing and the NPCC. This tight national coordination and control over public order doctrine and the delivery of training seeks to ensure that public order officers from police forces across England, Wales, Scotland and Northern Ireland are completely interoperable, including their approach to exercising powers such as Section 12.

Governance and Oversight of Public Order

Unlike Stop Search, public order does not routinely receive ongoing national or local political scrutiny. Beyond the College of Policing's Public Order APP and the associated training provision there is some

[90] Joint Committee On Human Rights Second Report on the Anti-Terrorism, Crime and Security Bill at Para. 64
[91] https://www.app.college.police.uk/app-content/public-order/

HMIC inspection activity, although this is relatively light touch and included within their work inspecting forces' and Police and Crime Commissioners' Strategic Policing Requirement preparations. In addition, some Police and crime Commissioners may provide some local scrutiny and oversight, but this will be variable and depend on local priorities. However, when things 'go wrong' public order policing has attracted detailed and intense exploration of its doctrine and tactics, with substantial and highly influential reports being followed. The Scarman Report which looked at the Brixton Riots in April 1981 and HMIC's Adapting to Protest reports that looked in detail into the policing of the 2009 G20 summit in London and the death of Ian Tomlinson are two examples which had a profound impact on public order policing in the UK.

Germany

Police Identification During Protests

When considering policing and the legal context for police in Germany, it is necessary to consider the law of each German state within the Federal Republic. According to the allocation of competences between Federal Government and federal states (*Länder* or *Bundesländer*), policing generally falls within the competences of the federal states. There is, however, a Federal Police (*Bundespolizei*) and a police force in each of the 16 federal states (*Landespolizei*). For the *Landespolizei*, federal states are responsible as the respective legislator, which means there are 16 federal state police laws and administrative regulations (*Verwaltungsvorschriften*). The competences of the *Bundespolizei* are markedly limited and restricted to border protection (the Federal Police developed out of the former Federal Border Police), aviation security, railway policing, and the protection of federal bodies. Assemblies and marches (*Aufzüge*), the latter of which is the judicial term for protests, usually fall within the responsibility of the respective *Landespolizei*, sometimes with mutual assistance of police from other federal states. The issue of police officers wearing insignia in order to later identify them (*Kennzeichnungspflicht*) is particularly relevant in the context of protests or demonstrations.

As the federal states are responsible for policing, there are 16 different regulations for wearing police insignia in Germany, which can be implemented by wearing name tags or individual numbers. Regulations with regard to wearing insignia are rarely legally standardised and mostly found in internal instructions (*interne Dienstanweisungen*) or administrative regulations. There are German federal states where no such regulations are in place or where they have been abolished as in the state of North Rhine-Westphalia (s. below).

The only legal regulation that we are aware of can be found in the police law of the state of Brandenburg (BbgPolG)[92]. The regulation reads:

"§ 9 Obligation of legitimisation and identification (*Legitimations- und Kennzeichnungspflicht*)

(1) Law enforcement officers have to identify themselves upon request to persons affected by official measures.

[92] Gesetz über die Aufgaben, Befugnisse, Organisation und Zuständigkeit der Polizei im Land Brandenburg (Brandenburgisches Polizeigesetz, BbgPolG)

(2) Law enforcement officers wear name tags when performing official duties. When closed units (*geschlossene Einheiten*) are deployed, the name tag is replaced with insignia that can later be used for identification.
(3) Obligation of legitimisation and indication of name do not apply when they would negatively affect the purpose of the measure or official duty or predominant needs of the law enforcement officer that are worthy of protection.
(4) Content, scope, and exceptions of these obligations are regulated by the member of the federal government concerned with the interior by administrative regulation."[93]

In principle then, police officers have to wear a name tag in the federal state of Brandenburg. For closed deployments, e.g., police units deployed during protests or large-scale, these tags can be replaced with a number. Sections 3 and 4 allow for suspending the obligation of legitimisation and identification in order to protect the officers, e.g., during operations targeting organised crime or terrorist groups.

Other federal states have addressed the issue of wearing police insignia in a sub-statutory way (*untergesetzlich*), i.e., in ministerial orders or administrative regulations. In the federal state of Berlin, the Chief of Police released the "Rules of Procedure (*Geschäftsanweisung*) ZSE No. 2/2009 regarding the wearing of name tags" on 26 November 2010 for the "entire police department". It reads:

"2. Wearing the name tag or badge number tag
(1) The modern police of the cosmopolitan federal capital is close to the members of the public and wearing name tags with the uniform is a self-evident gesture of service and customer orientation that is expected from citizens as well as visitors of our city.

[93] The German original wording is: „§ 9 Legitimations- und Kennzeichnungspflicht:
(1) Auf Verlangen des von einer Maßnahme Betroffenen haben sich Polizeivollzugsbedienstete auszuweisen.
(2) Polizeivollzugsbedienstete tragen bei Amtshandlungen an ihrer Dienstkleidung ein Namensschild. Das Namensschild wird beim Einsatz geschlossener Einheiten durch eine zur nachträglichen Identitätsfeststellung geeignete Kennzeichnung ersetzt.
(3) Die Legitimationspflicht und die namentliche Kennzeichnung gelten nicht, soweit der Zweck der Maßnahme oder Amtshandlung oder überwiegende schutzwürdige Belange des Polizeivollzugsbediensteten dadurch beeinträchtigt werden.
(4) Das für Inneres zuständige Mitglied der Landesregierung regelt Inhalt, Umfang und Ausnahmen von diesen Verpflichtungen durch Verwaltungsvorschrift.“

(2) Anyone bearing a uniform visibly wears either a tag with their surname or their five-digit badge number that is not identical with their personnel number. The decision as to which tag is worn is made by the respective bearer of the uniform. The regulations regarding individual marking of SEK officers from 8 February 2007 and 30 May 2008 remain unaffected."[94]

Again, police officers in the federal state Berlin[95] are required to wear a name tag. Officers serving in police special squads (*Sondereinsatzkommandos/SEK*, similar to the Special Weapons and Tactics units) are exempt as specific regulations apply to them.

Tracing the exact legal situation for all of the federal states would be beyond the scope of the current overview. However, one more regulation that seems noteworthy, is that in the federal state of Bremen. The Senator for the Interior and Sport of the federal state of Bremen's "decree regarding the wearing of name tags in closed deployments" from 2014 (decree No. 04/2014) reads:

"2 Insignia of police force

When part of deployment units (*Einsatzeinheiten*) used for closed deployments (*geschlossene Einsätze*), police officers wear personalised five-digit numerical back- and front identification allowing for tactical and individual identification."[96]

Deployment units are police forces that act as group, division or group of a hundred (*Hundertschaft*) under uniform command. There is an obligation for police to wear insignia in the federal states of Berlin, Brandenburg, Bremen, Hessen, Mecklenburg-West Pomerania, Rhineland-Palatinate, Saxony-Anhalt, Schleswig-Holstein, and Thuringia. In Baden-Württemberg, there is only such an obligation

[94] Original: „2. Tragen des Namensschildes bzw. des Schildes mit der Dienstnummer:
(1) In der modernen und bürgernahen Polizei der weltoffenen Bundeshauptstadt ist das Tragen von Namensschildern zur Dienstkleidung heute eine von den Bürgerinnen und Bürgern sowie den Gästen unserer Stadt erwartete selbstverständliche Geste der Service- und Kundenorientierung.
(2) Dienstkleidungsträgerinnen und Dienstkleidungsträger tragen sichtbar entweder ein Schild mit dem Familiennamen oder an dessen Stelle ein Schild mit einer fünfstelligen Dienstnummer, die nicht mit der Personalnummer identisch ist. Die Entscheidung, welches der Schilder getragen wird, trifft die jeweilige Dienstkleidungsträgerin bzw. der jeweilige Dienstkleidungsträger. Die Regelungen über die individuelle Kennzeichnung von Beamtinnen und Beamten des SEK vom 8. Februar 2007 und 30. Mai 2008 bleiben unberührt."

[95] Berlin, Hamburg, and Bremen are city states, i.e., a federal states consisting of one city and the surroundings.

[96] Original: „2 Kennzeichnung von Einsatzkräften:
In Einsatzeinheiten tragen die Polizeivollzugsbediensteten in geschlossenen Einsätzen an ihren Einsatzanzügen eine personenbezogene fünfstellige numerische Rücken- und Frontkennzeichnung, die die taktische und die individuelle Zuordnung ermöglicht."

during traffic enforcement and during major events (*Großveranstaltungen*). North Rhine-Westphalia is a special case: There was an obligation for police to wear insignia according to the "administrative regulation regarding the obligation of legitimisation and identification of police officers of 17 February 2017". This regulation was abolished through the Federal Minister of the Interior's Circular as of 24 October 2017 and only lasted for roughly half a year – the federal government had changed in the meantime.

> In 2018, the European Court of Human Rights (ECtHR) ruled against Germany for a procedural violation of Article 3 (Prohibition on torture and degrading treatment) when two football fans claimed that officers accused of police brutality could not be identified despite investigation attempts. The Court ruled that "where the competent national authorities deploy masked police officers to maintain law and order or to make an arrest, those officers should be required to visibly display some distinctive insignia, such as a warrant number. The display of such insignia would ensure their anonymity, while enabling their identification and questioning in the event of challenges to the manner in which the operation was conducted (…)The consequent inability of eyewitnesses and victims to identify officers alleged to have committed ill-treatment can lead to virtual impunity for a certain category of police officers."[97]

The German federal government issued a statement regarding the judgment on 2 August 2018 including the following conclusion:

> "The Federal Government considers that no further individual measures are required, apart from the payment of the just satisfaction in respect of non-pecuniary damage, and that the general measures adopted will prevent similar violations and that Germany has thus complied with its obligations under Article 46, paragraph 1 of the Convention."[98]

Consequences of wearing insignia

It is difficult to find reliable statistics or empirical data on the negative (or positive) consequences of police wearing insignia. This has to do with the inconsistent legislation and the fact that, for obvious reasons, police do not usually participate in surveys by "outsiders". Berlin is one exception where

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[97] *Hentschel and Stark v Germany* ECtHR 2018 (Application No. 47274/15) Para 91.
[98] https://rm.coe.int/09000016808de32e

some data are available from different sources. As outlined above, there is a general obligation for police force to wear insignia in Berlin since 2010. From 1 January 2012 until 31 December 2016, Berlin police collected data on expressions of gratitude or praise and informal or formal complaints about specific police officers based on their insignia. Data collection also allowed for complaints by police officers about attacks targeting them or their relatives based on their insignia, e.g., because individuals from outside the police force had been able to identify them. Data collection was discontinued in 2017 because the obligation to wear insignia "had not led to any significant changes or anomalies in complaints" according to a reply by the Senate of Berlin to a written question regarding the consequences of wearing insignia.[99] The reply also includes data that seem relevant for the current purposes: A total of 65 complaints about specific police officers had been filed based on their insignia in the five years of data collection. None of these complaints led to a conviction.[100] Within that same time span, no single police officer had filed a complaint about negative consequences incurred because of the obligation to wear insignia. The Senate was also not aware of any instances where individuals external to police had obtained knowledge of private data behind insignia or where police officers had incurred any other negative consequences because of their insignia.

A survey among 273 Berlin police officers serving in five separate groups of a hundred (*Hundertschaften*) provides some additional data and sheds light on officers' personal opinions with regard to wearing insignia.[101] In the two years before introducing individual insignia – five-digit numerical identification on the officers' backs in this case –, there had been 26 and 20 complaints about officers from the five groups, respectively. In the first year of obligatory wearing of insignia, there were 25. The study suggests that "the argument that individual insignia may lead to an increase in complaints to the detriment of officers is therefore incorrect" (p. 196).

Summarising all the questions and responses regarding officers' attitudes towards wearing insignia would be beyond the scope of the current overview. Some of the most relevant findings were that

[99] Abgeordnetenhaus Berlin, Drucksache 18/10 780, Antwort auf die schriftliche Anfrage „Individuelle Kennzeichnungspflicht für Polizeibeamt*innen in Berlin – Befürchtungen und Wirklichkeit".
[100] In fact, according to all available sources, German police officers rarely ever get convicted at all for ill-treatment including instances of excessive use of force, see Singelnstein, T. (2010). Polizisten vor Gericht. Strafverfahren wegen Körperverletzung im Amt. *Bürgerrechte & Polizei, 1*, 55-62, and Amnesty International (2010). *Unknown Assailant: insufficient investigation into alleged ill-treatment by police in Germany*. London: Amnesty International Publications.
[101] Thinnes, B. (2015). Kein Kummer mit der Nummer? Ergebnisse einer empirischen Erhebung zur Kennzeichnungspflicht in den Berliner Einsatzhundertschaften im Mai 2013. In B. Frevel & R. Behr (Hrsg.) *Empirische Polizeiforschung XVII: Die kritisierte Polizei*, S.186-208. Frankfurt: Verlag für Polizeiwissenschaft.

most participants thought that "misconduct by officers can also be documented without insignia"[102] (81% agreed somewhat or fully with the respective statement) while 47% thought that "individual insignia identify the 'black sheep'"[103] and only 61% of the officers agreed somewhat or fully with the statement that "the citizen has a right to know who is taking a measure against them".[104] The fact that the remaining 39% disagree with the statement could be interpreted as a problematic understanding of the role of police when taking measures according to the study. The study concludes that roughly half of the surveyed officers (52%) would prefer not to wear insignia and that undue use of force by police will only be partly reduced through insignia. However, there was no indication of negative consequences for officers because of the insignia: "neither on nor off the job will officers be victimised because they wear an individual number on their backs" (p. 207).

Wearing of Masks During Protests

Ban of face coverings according to the law of assembly

In the law of assembly, under which the right to demonstrate falls, the allocation of competences between the federal government and federal states is even more complex than in German police law. After a reform in 2006, the federal government no longer has legislative power, i.e., the legislative power lies completely with the federal states. However, independent laws of assembly exist only in the federal states of Bavaria, Lower Saxony, Saxony, Saxony-Anhalt, and Schleswig-Holstein. For all other federal states, according to Art. 125a of the Constitution (*Grundgesetz*), the federal law of assembly (*Versammlungsgesetz des Bundes, B-VersG*) applies on a transitional basis. The following discussion refers to the latter.

There is an obligation according to the B-VersG for police officers to make themselves known to the leader or the person responsible for an assembly. The regulation reads:

"§ 12 When police officers are deployed to a public assembly, they have to make themselves known to the leader. They must be granted adequate space."[105]

[102] Original: „Fehlverhalten von Beamten kann auch ohne Kennzeichnung dokumentiert werden."
[103] Original: „Mit einer individuellen Kennzeichnungspflicht werden die ‚schwarzen Schafe' identifiziert."
[104] Original: „Der Bürger hat ein Recht zu erfahren, wer eine Maßnahme gegen ihn trifft."
[105] Original: „§ 12 Werden Polizeibeamte in eine öffentliche Versammlung entsandt, so haben sie sich dem Leiter zu erkennen zu geben. Es muß ihnen ein angemessener Platz eingeräumt werden."

Note that this regulation does not refer to the obligation for police officers to wear insignia discussed above but the case where police officers in plain clothes participate in an assembly (or meeting etc.). The regulation therefore precludes covert police investigations during assemblies. Police officers wearing uniform make themselves known as police by their uniform which is regarded as sufficient even if they are not wearing distinctive insignia.

The so-called ban of face coverings (*Vermummungsverbot*), i.e., the ban to wear clothing or other objects impeding identification, was treated as a misdemeanor (*Ordnungswidrigkeit*) in German law of assembly until 1985. Legislative changes then turned it into an offence (*Straftat*). This entails far-reaching consequences not only regarding the type and severity of punishment. Misdemeanors are punished only with fines, not with imprisonment. More importantly, police must intervene for offences (legality principle) while they have discretion to decide whether or not to intervene for misdemeanors (opportunity principle). This means that police have strategic discretion, e.g., to de-escalate, in the case of misdemeanors while no such discretion exists in the case of offences, at least according to current German legislation.

The regulations in the B-VersG read:

"§ 17a (1) It is prohibited during public open-air assemblies, meetings or other public open-air events or on the way there to carry defensive weapons or objects that are suitable to be used as defensive weapons and, according to the circumstances, intended to ward off measures by law enforcement officers.

(2) It is also prohibited

1. To participate in such events in an outfit that is suitable and, according to the circumstances, intended to prevent identification or to cover the way to such events in such an outfit.

2. To carry objects that are suitable and, according to the circumstances, intended to prevent identification during such events or on the way there.

(4) The competent authority can impose orders to enforce the prohibitions of sections 1 and 2. More specifically, it can exclude persons contravening these prohibitions from the event."[106]

[106] Original: „§ 17a (1) Es ist verboten, bei öffentlichen Versammlungen unter freiem Himmel, Aufzügen oder sonstigen öffentlichen Veranstaltungen unter freiem Himmel oder auf dem Weg dorthin Schutzwaffen oder Gegenstände, die als Schutzwaffen geeignet und den Umständen nach dazu bestimmt sind, Vollstreckungsmaßnahmen eines Trägers von

The penalty range is scaled as follows:

"§ 27 (1) Anyone carrying weapons or other objects during public assemblies or gatherings that are suitable and intended to harm persons or damage objects without official authorisation will be punished with imprisonment of up to one year or fined. The same penalty applies to anyone carrying weapons or other objects in the sense of Sentence 1 without official authorisation on their way to public assemblies or gatherings, anyone bringing them to such events or providing or distributing them for use during such events.

(2) Anyone who 1., contravening § 17a Section 1, carries defensive weapons or objects that are suitable to be used as defensive weapons and, according to the circumstances, intended to ward off measures by law enforcement officers during public open-air assemblies, meetings or other public open-air events or on the way there

2., contravening § 17a Section 2 No. 1, participates in such events in an outfit that is suitable and, according to the circumstances, intended to prevent identification or covers the way to such events in such an outfit … will be punished with imprisonment of up to one year or fined."[107]

It is therefore punishable to wear a mask or carry defensive weapons during assemblies or on the way there. The latter cover motorcycle helmets or shields, protective gear worn by American football-

Hoheitsbefugnissen abzuwehren, mit sich zu führen.
(2) Es ist auch verboten,
1. an derartigen Veranstaltungen in einer Aufmachung, die geeignet und den Umständen nach darauf gerichtet ist, die Feststellung der Identität zu verhindern, teilzunehmen oder den Weg zu derartigen Veranstaltungen in einer solchen Aufmachung zurückzulegen.
2. bei derartigen Veranstaltungen oder auf dem Weg dorthin Gegenstände mit sich zu führen, die geeignet und den Umständen nach dazu bestimmt sind, die Feststellung der Identität zu verhindern. …
(4) Die zuständige Behörde kann zur Durchsetzung der Verbote der Absätze 1 und 2 Anordnungen treffen. Sie kann insbesondere Personen, die diesen Verboten zuwiderhandeln, von der Veranstaltung ausschließen."

[107] Original: „§ 27 (1) Wer bei öffentlichen Versammlungen oder Aufzügen Waffen oder sonstige Gegenstände, die ihrer Art nach zur Verletzung von Personen oder Beschädigung von Sachen geeignet und bestimmt sind, mit sich führt, ohne dazu behördlich ermächtigt zu sein, wird mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bestraft. Ebenso wird bestraft, wer ohne behördliche Ermächtigung Waffen oder sonstige Gegenstände im Sinne des Satzes 1 auf dem Weg zu öffentlichen Versammlungen oder Aufzügen mit sich führt, zu derartigen Veranstaltungen hinschafft oder sie zur Verwendung bei derartigen Veranstaltungen bereithält oder verteilt.
(2) Wer 1.entgegen § 17a Abs. 1 bei öffentlichen Versammlungen unter freiem Himmel, Aufzügen oder sonstigen öffentlichen Veranstaltungen unter freiem Himmel oder auf dem Weg dorthin Schutzwaffen oder Gegenstände, die als Schutzwaffen geeignet und den Umständen nach dazu bestimmt sind, Vollstreckungsmaßnahmen eines Trägers von Hoheitsbefugnissen abzuwehren, mit sich führt,
2. entgegen § 17a Abs. 2 Nr. 1 an derartigen Veranstaltungen in einer Aufmachung, die geeignet und den Umständen nach darauf gerichtet ist, die Feststellung der Identität zu verhindern, teilnimmt oder den Weg zu derartigen Veranstaltungen in einer solchen Aufmachung zurücklegt … wird mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bestraft."

players, and more. Carrying a defensive weapon suffices, individuals do not have to wear, e.g., the motorcycle helmet, to be punishable. The regulation can therefore produce absurd situations where, according to Road Traffic Regulations (*Straßenverkehrsordnung, StVO*), there is a simultaneous obligation to wear a helmet when using motorcycles or mopeds, e.g., on the way to an assembly.

While it is only punishable to wear clothing that can prevent identification, police can already intervene according to § 17a B-VersG when participants carry such items with them. These obviously include balaclavas (*Sturmhauben*), which are again a piece of clothing for motorcyclists. Other items listed in the German legal literature are clown masks, fake beards, cardboard noses, face masks, wooly hats, and scarves (at least in summer).[108] According to a judgment by the district court (*Landgericht*) Hannover, wearing sunglasses and a base-cap suffices to assume face covering. The extreme right-wing defendant in that specific case was still later acquitted because it could not be proven that she was wearing the items specifically for the purpose of disguising her identity. Hence, there was no intention according to the court. As a result, the legal situation is anything but clear – the so called "Clowns Army", for example, pursues explicitly de-escalating and peaceful aims and any intention for them to avoid identification is highly questionable. According to press reports, bans to wear clown masks by the Public Order Office (*Ordnungsamt*) were revoked by the Administrative Court (*Verwaltungsgericht*) in Dresden.[109] The legal situation therefore remains unclear because of subjective requirements.

The federal state of Saxony-Anhalt has abolished the ban of face coverings with the 2009 federal law of assembly. In Schleswig-Holstein, it is a misdemeanor again since 2015 (§§ 17, 24, Freedom of Assembly law of the federal state of Schleswig-Holstein).[110]

Consequences of face coverings

This is not the place to discuss the extensive body of social psychological and sociological research on the potential consequences of face coverings (collected, e.g., under the umbrella of the controversial concept of "deindividuation"). The issue of face coverings during public assemblies was, however, recently raised in the aftermath of one major protest event in Germany – the protests surrounding the

[108] *Wache* § 17a VersG, Rnr. 5, in: Erbs/ Kohlhaas Versammlungsgesetz-Kommentar (München 2019).
[109] https://www.heise.de/tp/features/Gericht-weist-Auflagen-fuer-Rebel-Clowns-Army-zurueck-3422083.html
[110] For the sake of completeness, German Road Traffic Regulations also include a ban of face coverings. The regulation reads: § 23 (4) Anyone driving a motor vehicle must not conceal or cover their face in a way that renders them unidentifiable. (Original: § 23 STVO: (4) Wer ein Kraftfahrzeug führt, darf sein Gesicht nicht so verhüllen oder verdecken, dass er nicht mehr erkennbar ist.)

G20 summit in Hamburg 2017. A comprehensive study involving interviews with police, protesters, and journalists was conducted by a team of researchers and we shall briefly summarise some results that seem relevant for the current purposes.[111]

Hamburg police, according to the deputy leader of one of the groups of a hundred (*Hundertschaften*) deployed during the protests and interviewed in the study, follow the general rule that "the more offences are committed during an assembly, the closer we approach" (p. 42).[112] The strategy is meant to increase pressure on the whole group to prevent other participants from committing offences too. One such offence can be the covering of faces of individual protesters upon which protests are stopped. As outlined above, however, the legal situation is unclear as to what exactly falls under the ban of face coverings or what qualifies as such (*Vermummung*). Ambiguous situations therefore arose during some of the protests where police officials explained that the general "Hamburg rule" will be applied to protesters covering their faces without clarifying what exactly will be treated as face covering, e.g., during the "Welcome to hell" protest (p. 53). A large group of several thousand protesters was therefore stopped because of participants who had covered their faces (it later turned out that at least some of the individuals that had covered their faces were actually police officers in plain clothes, see Footnote 37). This situation later escalated into heavy violence with injuries of protesters, the large majority of which had acted according to police requirements, but also police officers.

Adequately discussing the interplay of the behaviour of police and protesters, and escalation into violence during the G20 protests would be far beyond the scope of the current overview. We are also not in a position to comment on the contributions of the "Black Block", the police, prior planning or other factors to the escalation of specific situations during the protests. It seems fair to conclude, however, that police generally reacted with heavy police presence and that such demonstrations of superiority, that were intended to function as "de-escalative strength" according to police, regularly led to escalation and conflict during the protests according to the study. The ban on face coverings was often used as a reason to stop or disperse protests and, at least in these cases, was therefore more of a starting point for escalation and violence rather

[111] Malthaner, S., Teune, S., Ullrich, P., et al. (2018). *Eskalation: Dynamiken der Gewalt im Kontext der G20-Proteste in Hamburg 2017*. Berlin: Institut für Protest- und Bewegungsforschung.
[112] „[…] je mehr Straftaten von einer Versammlung ausgehen, desto dichter gehen wir ran."

Switzerland

Police Identification During Protest

National approach to the policing of protest

The local police corps (city police or cantonal police) is generally responsible for police operations related to demonstrations or protests ("territorial sovereignty"). For larger operations in particular, units from the relevant police concordats can be called in. There are four different concordats (agreements between cantons) for intercantonal cooperation (Konferenz der Kantonalen Polizeikommandanten, 2019, 1 January).

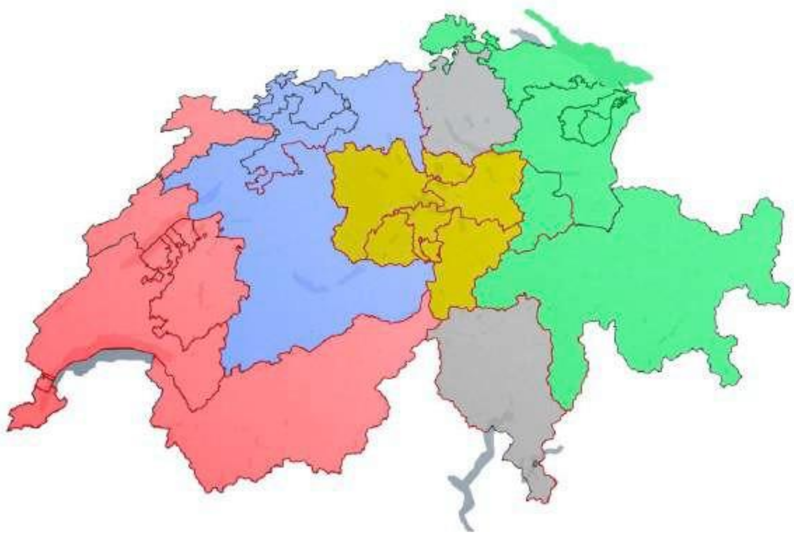


Figure 4: The four Swiss police concordats and their member

- French-speaking Switzerland (CCPC RBT; in Figure 1 in red) with the cantons of Fribourg, Geneva, Jura, Neuchâtel, Vaud and Valais
- Northwestern Switzerland (PKNW; in Figure 1 in blue) with the cantons of Aargau, Bern, Basel-Land, Basel-Stadt and Solothurn.
- Central Switzerland (ZPKK; in Figure 1 in yellow) with the cantons Lucerne, Nidwalden, Obwalden, Schwyz, Uri and Zug
- Eastern Switzerland (ostpol; in Figure 1 in green) with the cantons of Appenzell Innerrhoden, Appenzell Ausserrhoden, Glarus, Grisons, St. Gallen, Schaffhausen, Thurgau and the National Police of the Principality of Liechtenstein.

The cantons of Zurich and Ticino, on the other hand, are not in a concordat. In the case of operations that cannot be handled within the framework of the respective concordat (e.g. World Economic Forum WEF), the agreement on intercantonal police operations (IKAPOL) comes into play. Police units from all over Switzerland can be called in.
In the case of demonstrations, protests and football matches, public order police officers of the respective police corps are usually deployed (in addition to other units). These police units have a full-body armour, helmet with visor, shield and, depending on their function, a specific armament (multi-purpose launcher for tear gas or rubber bullets, baton). The orientation of the Swiss police tactics focusses heavily on keeping the distance, especially with rubber bullets, tear gas and partly also water cannons. This is certainly a special feature that must be emphasized here. In principle, normal uniform policemen are called in for public order missions. All police officers are trained for such missions within the framework of their normal training and are usually re-trained by the respective police corps. According to the information provided to me from Bern, Zurich, Lucerne and Basel, however, only personnel up to a certain age are used for such operations (for example, in the case of the Zurich city police, only up to the age of 45).

Police Officer Identification

The legal provisions concerning the identification of police officers are defined by the respective police corps itself. Accordingly, there are different regulations here. In the following, the four larger police corps in Switzerland, the Cantonal Police of Berne, the Cantonal Police of Basel-Stadt, the Zurich City Police and the Cantonal Police of Lucerne will be discussed. In the case of normal police uniforms, it is customary for all four police corps have the family name of each police officer on the front of the uniform (at chest height). However, the public order police uniform does not have any visible name (in any of the four police corps). Instead, a personal or group-specific number is used, although the placement, colour and form of the four police corps differ. The handling is described in the following subchapters.

There is no specific inspection authority for police operations in Switzerland. But in principle, politics has a certain inspection function here. The respective local council is authorised to issue instructions in this sense. It also happens regularly that parliamentarians submit postulates and the police has to take a stand on them. This applies to all cantons in Switzerland. All the cantons involved also have an ombudsman's office. It receives complaints relating to the municipal administration or a municipal

business. It reports to parliament but is independent of the municipal council and the administration. However, it should also be made clear here that, in principle, all citizens have the right to have the actions of the police legally recognised (by means of criminal charges).

All in all, the responsible police officers from the involved police corps mutually agreed that the identification of police officers has so far not been the subject of public debate or a topic that has been perceived as problematic by the public.

Cantonal Police of Basel-Stadt

The identification of police officers at the Cantonal Police of Basel-Stadt is defined in the Cantonal Police Ordinance PolV (Art. 9 para. 1-3). It stipulates that an individualising marking must also be worn during public order operations. However, the position of the marking is not further specified and is determined by the police corps itself. In accordance with this requirement, each police officer has his own individual number, which always remains the same and has to be worn on the front of the public order uniform during operations (see figure 2; the symbol above the number represents the cantonal emblem of Basel).



Figure 5: A police officer of the Basel-Stadt Cantonal Police – in this case the head of operations – with his public order uniform and the necessary individual identification at chest level (directly above the helmet) (© Urs Wicki, Basel-Stadt Cantonal Police).

This regulation applies to all ranks, including the head of operations. Excluded from the regulation are members of the special units (Art. 9 para. 3 PolV). The control of the correct wearing of the personal ID number is a management task and is usually taken over by the group leader. There is no independent inspection regime for the monitoring of police operations of the Cantonal Police of Basel-Stadt. Like all the other involved cantons, the Canton Basel-Stadt has an ombudsman who receives complaints regarding police actions or operations. In case of a complaint, the ombudsman

will clarify and check what happened and try to mediate between the involved parties. Only in the field of public order operations at football matches there are so-called "operational match visits" (formerly "audits") by the Federal Office of Police and the Police Coordination Platform Sport. However, it is not per se intended to check the identification of police officers during these visits.

Cantonal Police of Bern

The police law of the Canton of Bern does not define any specific requirements regarding the identification of police officers during public order operations. There are of course also no indications concerning colour or positioning. According to the information provided by the Cantonal Police of Bern, they use group-specific numbers for each police group during public order operations. The list of members of each group is compiled before the operation. And due to the different functions within the group, it is possible to identify the relevant police officer. According to the information of the Cantonal Police of Bern, the identification of a relevant police officer has never been a problem so far, despite the fact, that not every police officer has his own number.

The relevant group numbers are visible on the back of their vest and on the back of their helmet (see figure 3).



Figure 6: public order police officers of the Cantonal Police of Bern and their group assignment on the back of the helmet and of the uniform (in grey) (© Alain Brechbühl, Universität Bern) .

We assume that the numbers will be checked either by the group or platoon leader. However, similar to all the other involved cantons, there are currently no independent inspections that would control public order policing operations. There is the cantonal ombudsman who will receive complaints about the police and is fulfilling the similar tasks as in Basel-Stadt or the other cantons.

Cantonal Police of Lucerne

According to the information provided by the Cantonal Police of Lucerne, all police forces deployed in Lucerne must be identifiable. There are no requirements regarding colour or positioning. In Lucerne, identification is ensured by a visible ID number on the back of the helmet at the start of operations. Each member of a group (each group consisting of four police officers) is assigned a number. Due to the different functions within the group and the number, it is possible to identify the relevant police officer.



Figure 7: public order police officers of the Cantonal Police Lucerne and their group assignment in yellow on the back of the helmet (©Martin Meienberger/freshfocus; Source: https://regiofussball.ch/2019/05/12/spielabbruch-in-luzern-gc-taumelt-abstieg-entgegen/)

Should massive disadvantages be feared due to an ID number of the police officers, numbering can be abandoned by the head of operations. In principle, there is no need to prove that the requirements for the identification of police officers have been met. The responsibility lies with the Command before the operation and with the officer-in-charge/head of operations during the operation.

There are currently no independent inspections that would control public order policing operations. For complaints about the police or the police's actions, the Canton of Lucerne has an ombudsman, who is fulfilling the similar tasks as in Basel or the other cantons. With regard to public order police operations at football matches in Lucerne, the same "operational match visits" (formerly "audits") by the Federal Office of Police and the Police Coordination Platform Sport are used in Lucerne as in Basel-Stadt. However, even in Lucerne, it is not per se intended to check the identification of police officers during these visits.

Zürich City Police

The identification of police officers of the Zürich City Police is defined in the cantonal police law (Art. 12 para. 2 PolG). However, it is only stipulated that the respective police must ensure that the deployed police officers can be identified. There is no further specification concerning form, size, colour or position of this identification. For public order operations, each police officer is assigned his or her own number when deployed in a public order uniform. This regulation applies to all persons who are on duty, with the exception of the respective head(s) of operation. This ensures the protection of the police officers concerned and still enables identification. When the platoon is put together, the number list is created, and each police officer receives a personal sticker (see figure 5).



Figure 8: The assignment of the numbers of each police officer at the Zürich City Police (© Andreas Moschin, Stadtpolizei Zürich).

The number is affixed on the chest of each police officers public order uniform (see figure 6).



Figure 9: The positioning and size of the personal ID number on the public order vest of the Zürich City Police. (© Andreas Moschin, Stadtpolizei Zürich).

The list with the assignment is checked accordingly by the platoon leader. According to the information provided by the Zürich City Police, there is no exception where the police officers could resign from wearing their personal ID number. This whole principle has been in use for round about eight years. The demand for the identification of police officers originally came from left-wing circles at the political level, with specific reference to the constitutional law. For complaints about the police

or the police's actions, the Canton of Zürich has an ombudsman, who is fulfilling the similar tasks as in Basel-Stadt or the other cantons.

Wearing of Masks During Protests

The respective legislation concerning the masking of persons is a cantonal matter. There are cantons where the wearing of a mask is prohibited by law, as well as cantons that do not prohibit it. However, all four included cantons have a law that prohibits masking. Since the legislation in all four cantons hardly differs here, there will be an overall discussion of this question.

Legal and Policy frameworks

In all four cantons, masking is prohibited by the respective cantonal infringement law[113] (Art. 40 para. 4 of the Cantonal infringement criminal law of Basel-Stadt; Art. 20 para. 1 and 2 of Cantonal Criminal Law of Bern; Art. 9a para. 1 and 2 of the Cantonal Infringement Criminal Law of Lucerne; Art. 10 of the Cantonal Infringement Law of Zurich). However, the competent authority may – in all four cantons – grant exceptions in justified cases. Violation of the prohibition on the wearing of masks generally constitutes an infringement and is punishable by a fine. In the view of the four police forces, there is no direct risk from wearing a mask. Therewith, there is absolutely no obligation for the police to act in the case of masked persons during an event. In case of any intervention during public order operations, the focus is always on balancing legally protected interests. All four police corps strongly emphasised the principle of proportionality ("Verhältnismässigkeit") which is specified in all four cantonal police laws (Basel-Stadt: Art. 7; Bern: Art. 23; Lucerne: Art. 5; Zurich: Art. 10). Interventions due to masked crowd members is generally considered disproportionate. According to the statements of the involved police corps, it hardly ever happens that people will be pulled out of a demonstration by the police just because they are wearing a mask. A subsequent escalation of the situation in particular would probably constitute a clear infringement of proportionality.

In the context of a possible weighing up of an intervention, it can be stated that the discretionary scope of the individual police officer at the front line plays only a subordinate role in public order operations. For the policing of protests and demonstrations, all police forces usually use a formation

[113] Here is a brief excursus on Swiss criminal law: Depending on the seriousness of the offence in Switzerland, it may be (1) an infringement, (2) an offence or (3) a crime. The former is punishable by a fine, offences are punishable by a fine or imprisonment (up to three years) and crimes are punishable by a maximum imprisonment of more than three years.

and the superiors also decide on a possible intervention accordingly (for example the platoon leader decides about the use of coercive means and pepper spray, the operations commander about the use of irritant).

Operational experience

The experience of the police officers interviewed shows that authorised demonstrations generally have fewer masked people, whereas planned but unauthorised demonstrations often have more masked people. This, however, mainly has an impact on part of the risk assessment for the head of operation. According to the Zürich City Police for example, a mass of about half of all persons wearing masks is considered a potential risk. In addition to demonstrations, all police officers agreed that masking also is quite relevant in the context of sports events (football fans).

Other relevant information

The police corps agreed that the issue of masking currently plays a subordinate role, but from time to time it is again an issue in political debates. At the moment the topic of masking is more relevant in relation to religion (for example the wearing of burkas) instead of demonstrations.

According to the StaPo ZH, right-wing politicians regularly complain about the police's handling of masked protesters, describing it as too lax. However, a motion for a national law that prohibits masking was rejected in 2013. From the perspective of the protesters, the use of coercive measures (in particular rubber bullets) is way more the focus of criticism around the policing of protest.

Denmark

Police Identification During Protests

Denmark is a small country (42.933 km2) with around 5.7 million citizens. Danish police have around 16.700 employees in total of which approx. 11.100 works as police officers. Copenhagen is the capital of Denmark and Copenhagen police is also the largest police region with around 2.500 police officers employed in 2019.

National approach to the policing of protest

The policing of protest in Denmark in modern times can be roughly divided into two eras: before 18 May 1993 and after. During the 1980s, Danish police experienced a number of confrontations with different activist groups, especially in Copenhagen. Young people occupied abandoned houses (the so-called BZ movement) and activists demonstrated against major renovation of residential quarters in Copenhagen, which forced the poorest citizens out to the suburbs due to increased rents[114]. At the time, the Danish police officer's uniform only offered a minimum level of protection, with lightweight shin guards under their "riot uniforms". The main item of protection was shields, which on the one hand could serve as protection but on the other made it difficult to move around quickly and flexibly[115]. For more repressive interventions, the police officers were equipped with batons, handcuffs, guns and some with gas weapons. During the 1980s, attempts were made to modernize and harmonize the way Danish police handled crowd events but none of them succeeded[116]. The so-called Nørrebro riots on 18 May 1993 were a turning point for the policing of crowd events in Denmark[117].

On the 18 May 1993, Denmark accepted the EU's Maastricht Treaty by voting in favour of joining the Edinburgh Agreement. As the result became clear, riots broke out in the Nørrebro area in

[114] Karpantschof, R. (2008). Mere politi, flere optøjer : Danmarks nye uropoliti og ungdomsuroligheder 2006-2008 [More police, more riots: Denmark's new riot police and youth riots 2006-2008]. In M. Nilsen (Ed.), Disorder in Urban Public Space: Resistance or Crime?: Rapport fra NSfK's 50. Forskningsseminar i Forssa (Vol. 50, pp. 256-267): Nordisk Samarbejdsråd for Kriminologi (NSfK).
[115] Jepsen, J. (1986). Statsmagten, politiet og kollektive aktioner i nyere tid – gentager historien sig? [State power, police and collective action in recent times - does history repeat itself?]. In F. Mikkelsen (Ed.), Protest og oprør. Kollektive aktioner i Danmark 1700-1985 (pp. 275-316). Aarhus: Modtryk.
[116] Stevnsborg, H. (2010). Politi 1682-2007 [Police 1682-2007]. Frederiksberg: Samfundslitteratur.
[117] Wahlström, M. (2011). The Making of Protest and Protest Policing: Negotiation, Knowledge, Space, and Narrative (Vol. 47). Gothenburg: Department of Sociology, University of Gothenburg. Wahlström, M. (2016). Watershed Events and changes in public order management systems: Organizational Adaptation as a Social Movement Outcome. In L. Bosi, M. Giugni, & K. Uba (Eds.), The Consequences of Social Movements. Cambridge: Cambridge University Press.

Copenhagen. During the riots, around 100 police officers were wounded. The police fired 113 shots and wounded at least 11 protesters or bystanders. The riots were subject to political debate and investigations. A governmental commission was subsequently set up to consider the course of events during the protest and its eventual statement highlighted poor police tactics as being a decisive factor in what had occurred[118]. Even before the report from the commission was published, the Danish police took the initiative to reform public order policing. The reform led to the development of what is now called the "Mobile concept"[119]. The concept is organized around vehicles used tactically to block side roads, direct traffic and crowds, as well as being used as moving shields for the police officers required to exit the police vans in order to intervene in an action that requires police squads on the ground[120]. Every four vehicles will be headed by a "bronze commander" who works together with the head of the operation who is called "silver commander". The task of the silver commander is to plan and execute an operation within a general strategic framework set by a "gold commander".

There are many tactical manoeuvres and they are described and practiced down to the smallest detail, which gives the mobile concept the advantage of a common vocabulary and an effective command line. The concept is focused on improving police capability in controlling crowds through arresting, dispersing or containing the "counterpart" (i.e. the opponent) with the combined use of vehicles and squads of officers equipped with padding, batons, helmets and tear gas. The mobile concept has been implemented nationally, has proven to strengthen the Danish police's capability of reacting rapidly, and is widely recognized as being effective in improving the police's capability of handling major protests, including the protest at the European Union Summit in Copenhagen in 2002, which it counts as one of its success stories[121].

In 2007 Danish police was reformed and went from 54 to 12 police regions which made the regions larger and therefore more capable of handling large events with resources from their own region in contrast to previously where they often had to borrow personnel and cars from other police regions.

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118 Christrup, H., Haagen Jensen, C., & Homann, G. (2000). Beretning i henhold til lov nr. 389 af 22. maj 1996 om undersøgelse af Nørrebrosagen [Report under Act No. 389 of May 22, 1996, on the investigation of the Nørrebro case]. Copenhagen: Ministry of Justice.
119 Vittrup, K. (2002a). Operation [Operation]. Copenhagen: Copenhagen Police Department.
Vittrup, K. (2002b). Strategi [Strategy]. Copenhagen: Copenhagen Police Department.
120 Neufeld Redekop, V., & Paré, S. (2010). Beyond control – A Mutual Respect Approach to Protest Crowd-Police Relations. London: Bloomsbury Academic.
121 Björk, M. (2005). Between Frustration and Aggression: Legal Framing and the Policing of Public Disorder in Sweden and Denmark. Policing and Society, 15(3), 305-326.

On a national level the police are coordinated by the Danish National Police, but the national police do not have an operational force of their own. Each police region is required to have a certain number of trained squads available for national crisis or large events.

In 2012 Danish police implemented the so-called "dialogue police". The concept was originally developed for the policing of football and was based on a collaboration between a police region and academics (Havelund et al., 2011)[122]. The Elaborated Social Identity Model is part of the foundation and curriculum of the concept. A dialogue police unit is flexible in size. It can vary from a few police officers to up till 12-16 persons depending on the event and its nature. Their uniform is the regular light uniform without protection plus a yellow vest. Their main task is to facilitate, communicate and respond proactive to minor incidents. In cases of elevated risk, they will most likely be withdrawn and units of mobile police officers deployed. Meanwhile the dialogue police officers will continue their work in the periphery until things have deescalated.

If it is a small-scale deployment, the head of the unit might serve as the head of the operation. Otherwise the dialogue police commander is under the command of the silver commander like the rest of the operation that can include mobile deployment units, dogs, arrests transport etc. The implementation of the dialogue police concept was far from easy, but the implementation has contributed to a significant decline in number of arrests and detained at football matches as well as an improved relation between police and football supporters. As the results started to be recognized and the confidence in the concept grew, dialogue police officers were deployed at events other than football matches. The Copenhagen Police began deploying dialogue police officer at the annual "Copenhagen Distortion" event, a major five-day event in which several streets are transformed into huge dance and party areas. Dialogue police officers have also been deployed at both far right and far left-wing political protests around Denmark and today the concept is an integrated part in the policing of protest in Denmark.

Identification markings – legal and Policy frameworks

In Denmark, all police officers in uniform are obliged to wear an identification number attached to their uniform on their shoulders or on their chest (formatted with a letter followed by four digits).

[122] Havelund, J., Ilum, J., Jensen, M. A., Nielsen, B. P., Rasmussen, K., & Stott, C. (2011). Event policing - Dialogue in the policing of mass events in Denmark. European Police Science and Research Bulletin(4), 3.

The number is 6 x 3 cm with yellow text and black background. It is produced for the uniforms and is at the moment attached to the uniform with Velcro.

The background for the implementation were cases where citizens complained about detentions where it hasn't been possible for the Independent Police Complaints Authority to identify the police officers responsible[123]. The most notable incident that led to the implementation happened during the COP15 in Copenhagen in 2009.

> *Three removal men were routinely checked for ID and one of the person's civil registration number was confused with a number of a wanted terrorist. This led to a 13 hours detention and thorough inspection of several apartments before the mistake was discovered. The three men were then released and later complained to the Independent Police Complaints Authority about the detention and how they had been treated. Despite pictures documented the initial arrest it took more than 3 years to identify the police officers.*

Independent Police Complaints Authority, politicians and others pushed for regulations that could prevent situations like these. This resulted in a working group settled by the Ministry of Justice in 2014 with representatives from the Danish National Police, the Police Union, the police regions and the prosecution service. The working group made a survey about officer identification among the members of Europol, which is the European Union's law enforcement agency. Of the 28 EU member States the working group received answers from 12 countries (Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Malta, Luxembourg, Rumania, Slovakia and Slovenia). On this basis it was determined that all countries used some kind of marking on the uniform except Luxembourg and parts of Romania. The reasons for using it was different but all countries to some extend stated accountability as a contributing factor. All countries answered that officer identification hadn't resulted in elevated levels of harassments against police officers. The working group suggested that all police officers in uniform were obliged to wear an identification number while being on duty. This was accepted by the Ministry of Justice and the identification number was put into action February 2016 as part of the uniform regulations for the police officers. The only exemption is a special unit working under the Danish Security and Intelligent Service, but they are only deployed in very special situations like counterterrorism, taking of hostages etc. and thus do not have a role in the policing of protests.

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[123] DUP. (2013). Årsberetning 2012 [Annual report 2012]. Aarhus: Den Uafhængige Politiklagemyndighed [Independent Police Complaints Authority].

In general, the police officers have accepted the requirement to wear officer identification on their clothes. However, there are recent cases from Copenhagen where police officers have been observed without the identification number during protests. When this happens, both citizens, the press and the politicians react. Citizens complain to the Independent Police Complaints Authority and pictures often reach the news. But politicians are also aware of the issue. Recently, on September 5, 2019 the Danish Minster of Justice had to answer a question in the Legal Affairs Committee from a member of the Danish Parliament about police officers not wearing the identification numbers during protests on the 1st of May. It is the responsibility of the police region to ensure that the police officers wear the identification numbers. In situations where the police officers don't wear the identification number, they will get a warning and if the incidents reoccur the police officer can ultimately be dismissed due to violation of the uniform regulation. That hasn't happened yet. At the moment the police consider producing the uniforms where the identification numbers are either attached to the clothes with glue or embroidered and thus not possible to remove or forget.

Wearing of Masks During Protests

Police powers to deal with protester face coverings intended to conceal their identity

Following the Nørrebro riots in 1993 political discussion on prohibition of masking started. In 2000, a law on masking was passed and became an integrated part of The Criminal Code. After minor revisions the law now states that:

§ 134 b

(1) Any person who, in connection with meetings, gatherings, processions or similar, moves about with the face entirely or partially covered with a hood, a mask, paint or similar in a manner, which is likely to prevent identification, shall be liable to a fine or to imprisonment for any term not exceeding six months.

(2) The same penalty shall apply to any person who in a public place possesses objects, which must be considered intended for covering up the face under the circumstances as described in Subsection (1).

(3) The prohibitions of Subsections (1) and (2) do not apply to covering of the face, which serves other creditable purpose.

The chapter in the Danish criminal code regulates politically inspired crimes against order in public places. With the ban of masking and objects that might be intended to be used for covering up the face, the police have been given tools not only to intervene if masking occurs but also to take preventive measures to avoid situation where masking can occur. Danish legislation thus allows the police to search participants before, during and after meetings or protests. The law thus allows searches and citizens are obliged to identify themselves or otherwise being subject to arrest and further legal proceedings. The establishment of temporary "checkpoints" (bridges, squares, bus terminals, etc.) is another solution enabled by the juridical legislation.

The prohibition of masking and especially the police' ability to take preventive measures have had a major impact on the ability to access whether protests are to be regarded as lawful or unlawful. In situation where masking occurs the police will often start contacting the organizer of the protest to give the organizer the opportunity to self-regulate. If that doesn't prevent people from covering their faces, the police will most likely try to either intervene targeting the people that cover their faces or make an announcement using a megaphone or loudspeaker. The police are aware that any kind of intervention can lead to confrontations and escalation. The decision about when and how to intervene is taken on the day by the head of the operation as the intervention can have massive impact on the overall operation. A guidance in the decision process is the principle of proportionality and use of the least intrusive measure possible in the circumstance. Therefore, the decision by the police can be not to intervene if they assess that an intervention will lead to unproportionate escalation. Hence, offenders may be able to continue their activities for a time if, from the viewpoint of police tactics, a delay in intervening is suitable. In this situation the police will rely on video documentation to prosecute offenders at a later stage.

There have been a few protests against the law, but in general the law itself is not regarded as controversial as long as it is restricted to the use at large protests where throwing of bricks and stones against the police have occurred. The law is mainly used at protests, but it is also used in situations where football supporters, gang members or others cover their faces near police officers. In these situations, the police are instructed to assess masking of people as a sign of threat which sometimes, but not always, might be the case.

Until August 2018 § 134 b, section 3 included a phrase that allowed covering of the face "to protect against the weather" but that has been removed. What is left is that the covering of face is allowed if it serves a "creditable purpose" which is again open for discussion. The idea behind the formulation is that masks used for e.g. Halloween or work-related situations (like police officers' own use of helmets and balaclavas) are allowed. Previously there have been some uncertainties regarding when something could be characterized as "meetings, gatherings, processions or similar "and thus when the law could be used. However, in 2018 the parliament passed a law that prohibited facial coverings in the public in general and thus not just in connection with meetings, gatherings, processions or similar. The law was explicitly targeted toward the use of religious garments like burqa and niqab and has received criticism. However similar bans in France and Belgium have been upheld as proportionate by the European Court of Human Rights.

Sweden

Police Identification During Protests

Sweden is 450.295 km^2 large and has around 10 million inhabitants and around 29.000 employees by the police. The Swedish Police Authority is led by a National Police Commissioner who has a number of national departments (e.g. the National Operations Centre and the Legal Affairs Department).

National approach to the policing of protest

Since 2015, the police authority has been divided into seven regions and each police region has full responsibility for all police activities within its geographical area. A national department like National Operations Centre has the capacity to direct and supervise police activities nationally and internationally in order to ensure that resources are used efficiently. However, the Centre does not conduct any self-initiated operational activities but supports the police regions in their different activities.

Following a series of 'riots' surrounding an EU and then EU-US international summit in Sweden's second largest city, Gothenburg, in 2001 the Gothenburg Committee was established in order to investigate the public order disturbances. The Committee identified serious flaws regarding the way Swedish police intervened against crowds. One major issue was the use of different tactical models by units from different parts of Sweden[124]. This led to serious coordination problems. The committee was also critical of police's handling of the demonstrations surrounding the summit, determining in particular that the police had made insufficient use of dialogue before, during, and after the events. What was described was a need for a coherent national model for the leading and execution of police deployment in connection with special events. It was stressed that the police should take active measures to ensure that dialogue was incorporated as a natural working method in the organisation. As a result, the Swedish police launched the Special Police Tactics (SPT) project in 2004, with the aim to develop nationally standardised guidelines enabling a more effective and coordinated policing

[124] SOU. (2002). Göteborg 2001, Betänkande från Göteborgskommittén [Gothenburg 2001, Report from the Gothenburg Committee]. Retrieved from Stockholm:

approach to large public gatherings. The core of SPT is a mobile concept that was more or less taken and learnt from Denmark[125].

As with similar approaches in other Western European democracies, the SPT is designed to enable the rapid mobilisation of small squads of officers trained to a common standard, deployed in lightly armoured vehicles with clear chains of command. These squads are designed to utilise high level force and protective equipment (body armour, helmets, shields, batons, etc.) in extremely conflictual and stressful situations such as riots. In Sweden, these units are commonly referred to by their radio call sign Delta and mobilise in groups, which consist of one vehicle containing a commander and seven officers. A full Delta unit thus consists of a commander and four groups (vehicles). The SPT's overall perspective is one based fundamentally on the protection of human rights guaranteed under the European Convention (ECHR; e.g. protection of life, freedom of assembly, freedom of expression, etc.). The police task is defined as facilitating citizens' as well as seeking dialogue before, during, and after an event. Core to the SPT concept are the four "conflict reducing principles". In summary, these are ensuring that police have *Knowledge* about the nature of the identities and cultures of those within the crowd. The second is to use this knowledge to orient policing towards the *Facilitation* of those behaviours and intentions judged as lawful (e.g. peaceful assembly, expression, etc.) in order to promote perceptions of police legitimacy and conflict reduction through 'self-regulation'. The third is ensuring that effective *Communication* is achieved with crowd participants and maintained throughout. Finally, if use of force is necessary that it should be based upon *Differentiation* and not targeted against crowds indiscriminately. These principles then underpin a second core SPT concept referred to as the Graded Tactical Approach, defined as policing tactics that are adjusted appropriately to situational demands but which, by definition, require police to utilise tactics that are communication led and styled around normal policing as far as is possible before escalating to tactics designed for coercion.

Alongside the initiation of SPT a series of field studies were conducted by a knowledge development project group consisting of both police officers and researchers. Tied into the concept to work alongside the public order Delta units are specifically developed "Dialogue Police". For the development of the dialogue part of the SPT scientific knowledge was used[126]. The primary role of the

[125] Holgersson, S., & Knutsson, J. (2011). Dialogue Policing: A Means for Less Crowd Violence? In T. D. Madensen & J. Knutsson (Eds.), Preventing Crowd Violence. London: Lynne Rienner Publishers.
[126] Adang, O. (2012). Reforming the Policing of Public Order in Sweden: Combining Research and Practice. Policing, 7(3), 10. doi:10.1093/police/pas050

dialogue police is to act as a communication link between demonstrators and police commanders with the goal of facilitating protesters' legitimate intentions, identifying potential risks to public order and avoiding confrontation. Consequently, Dialogue Police work alongside Delta units when policing protest crowds. The Dialogue Police are deliberately non-coercive, operate with a very high level of discretion (i.e. they do not use force or make arrests) and focus on working with groups over extended periods in order to build shared understanding and relationships of trust and confidence. By eschewing coercion, the Dialogue Police are able to improve two-way communication and the capacity to resolve problems through negotiation between crowd participants and police. The Dialogue police have become embedded, if sometimes embattled, units across those policing regions within Sweden that adopt the SPT and are now widely recognised to have reduced the levels of conflict evident during protests in Sweden.

Identification markings - Legal and Policy frameworks

Swedish police officers wear a name tag on their regular uniform. The name tag includes name, title, function and place of service[127]. According to the Police Ordinance, police officers must be able to identify themselves towards the general population if a citizen request to see Police ID (SFS, 2014)[128]. However, in stressful situations like heated protests or during arrests police officers can omit to tell their names.

When it comes to the policing of protest, the police officers deployed as Delta will often wear either a fluorescent yellow vest, 'riot gear' or both and then the name tag won't be visible. But part of the Delta equipment is a sign to be places on the back and front of the uniform that states what Delta unit and squad number the police officer belongs to. This means that eight police officers wear the same number.[129] The number serves the purpose of assisting the commanders getting an overview of their resources more than for citizens to identify police officers during protests and other public order policing operations. Citizens' possibility to identify police officers via a number or marking is limited to the situations where police officers carry or wear their helmet. On the police helmet – both on the

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127 PMFS. (2018). Polismyndighetens föreskrifter och allmänna råd om polisens uniformer [Police regulations and general advice on police uniforms]. Stockholm: Polismyndighetens författningssamling (PMFS) [The police authority's constitutional collection].

128 SFS. (2014). Förordning (2014:1102) med instruktion för Polismyndigheten [Ordinance (2014: 1102) with instructions for the Police Authority]. Stockholm: Ministery of Justice.

129 Of the eight one will most likely be placed in a vehicle and another will wear an orange armband to indicate that he is in command of the group.

front and in the back – there is an individual number consisting of a letter indicating what region the police officer comes from followed by four digits (written in black, 3 cm in height). That number is individual and may only be erased or covered under circumstances where the police officer is at risk for threats or violence[130]. Sweden have had cases where police officers have been accused for covering their identification number. It is the responsibility of the police commanders to ensure that the identification number on the helmet is visible.

If Swedish citizens experience police officers violating the law, the case will be investigated by the Special investigations Department. The department investigate offences committed by police officials and complaints filed against police officials, police students, prosecutors, judges and Members of the Parliament. The department is an independent organisation of the Swedish Police Authority.

Part of the task for the aforementioned Gothenburg Committee was to investigate the possibilities for the implementation of a ban on masking at protests (SOU, 2002). The reason for this task was that police observed protesters covering their faces before and during confrontations. The Gothenburg committee stated that the right to protest is a cornerstone in Swedish democracy. However, the committee proposed a ban on masking at protests and the law was put into effect 1 January 2006 (SFS, 2005). According to the law it is prohibited for participants in a protest to partially or fully cover their faces in a way that makes it difficult to identify them. This prohibition applies only if there are disturbances of public order at protests or if there is an immediate risk of such disturbances. Offenders shall be liable to a fine or to imprisonment up till six months. The ban does not apply to the covering of the face for religious reasons and it does not apply to the extent participants are authorized to fully or partially cover the face (e.g. police officers). Following observed behaviour among football supporters the law on prohibition of masking was extended to cover sport events from 1 March 2017.

The laws against masking related to protests and football matches hasn't eliminated the use of masks. But experiences are that used in the right way the law against masking can contribute to perceived legitimacy among peaceful and non-confrontational protesters. It is here important to notice that the

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[130] RPSFS. (2014). Rikspolisstyrelsens föreskrifter och allmänna råd om märkning av skyddshjälmar m.m. [The National Police Board's regulations and general advice on labeling helmets etc.]. Stockholm: Rikspolisstyrelsens författningssamling [The National Police Board's constitutional collection].

law against masking is only effective in situations where there are disturbances of public order at protests or if there is an immediate risk of such disturbances. This means that police are required to make everybody aware of when the law is about to be used. To make people aware of that the police will *communicate* that to the protesters either through a megaphone or a loudspeaker. It is in these situations the police's responsibility to ensure that the message has been heard. Therefore, protesters will usually have time to unmask themselves and the message will thus *facilitate* the peaceful and non-confrontational protesters by making them aware that masking is no longer lawful and that police interventions will be *differentiated* by being targeted towards the masked protesters and those who offend the law in other ways. So, experiences have shown that combining the conflict reducing principles and the law against masking can enhance the perceived legitimacy among the peaceful and non-confrontational protesters and also make the police officers understand the heterogeneity of crowds.

Wearing of Masks During Protests

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Norway

Police Identification During Protests.

Norway is 385.207 km^2 and has around 5.26 million citizens. The Norwegian police have around 13.800 employees in total of which approx. 9.300 works as police officers distributed across 12 police districts. Oslo is the capital of Norway.

National approach to the policing of protest

Norway, like the other Scandinavian countries, have had incidents where protests have developed into disturbances (Jacobsen & Andersson, 2012; Sandberg, 2005). However, the largest impact on policing in Norway today comes from the so-called 2011 Norway attacks on the 22 July. On the day a right-wing extremist was responsible for a car bomb killing eight people in Oslo and later on the same day a massacre where 69 people were killed at a summer camp on the island Utøya. The police were criticized for not reacting on warning signs prior to the day and not reacting rapid enough on the day (NOU, 2012). Following the incident, the police made a reform that strengthened the central agency and merged regional police districts going from 27 to 12 police districts (NOU, 2013). The reform also emphasized proactive community policing with the aim of being more visible and accessible in the local community combined with the capacity and competence to prevent, investigate, and punish criminal acts and thereby secure the safety of citizens (Christensen, Lægreid, & Rykkja, 2016).

Legal and Policy frameworks

The issues of being visible, accessible and trust building with the local community was also the main reason for the introduction of police identification on uniforms in Norway. Ethnic minorities felt discriminated by what the organisation "Organisasjon Mot Offentlig Diskriminering" (Organisation against public discrimination) characterised as unproportionate and repeated ID controls. The organisation proposed an arrangement where people would get a receipt after a control (RJPD, 2003). This was assessed as being a too bureaucratic and work heavy arrangement and the Ministry of Justice and Police proposed a test where police officers wore identification numbers instead. The purpose of this was to reduce the distance between police and the public. The scheme was tested between 2002 and 2005 and was implemented nationwide from 2005. Today all police officers who interact with the public in one way or the other are obliged to wear their identification number visible to the public. The identification number is attached to the different uniforms and are thus visible to the public during protests (formatted with a letter followed by three digits). According to an announcement from

2011 made by the Norwegian Ministry of Justice and Police to the Danish Ministry of Justice while Denmark were in the process of implementing their system, the Norwegian experiences are that the police identification have improved the communication between the citizens and the police by making it less conflictual while making it easier for the public to identify police officers.

Wearing of Masks During Protests

Police powers to deal with protester face coverings intended to conceal their identity

Just like the citizens want to be able to identify a police officer, the police officers have the same wish when it comes to being able to identify citizens. In Norway the law against masking was implemented as part of the Police Law from 1995. The law states that it is prohibited for people participating in protests, gatherings and equal at public places to cover their faces unless they do so as part of a theatre, masquerade or similar (Police Law, § 11). Violation is punishable by a fine or up to three months imprisonment (Police Law, § 30).

It hasn't been possible to gather information about the Norwegian experiences with the law. But research indicate that citizens in general have trust in police and assess their encounters with police officers in positive terms (Thomassen, 2017).

Final remarks

It is important to notice that this introduction to public order policing in Denmark, Sweden and Norway only scratches the surface of developments in the respective countries and the experiences from laws and regulations can vary across the countries and over time. Challenges to the policing of protest are dynamic and influenced not only by the available police resources and competences but also by aspects like politics as well as the nature of the protests and the behaviour of the protesters. One of the things that police in Denmark, Sweden and Norway have in common is the steady growing acknowledgement that dialogue and trust building with the 'counterpart' whether it is protesters or football supporters are key features to the task of facilitating citizens right to peaceful protests and assembly while maintaining law and order in ways the public perceive legitimate.

Australia

In light of the time pressures to quickly secure an Australian perspective this response has been secured through police to police contact, supported by open source research, rather than through formal organisational contact. Consequently, much of the content is not attributed. The Australian Federal Police (AFP), in the context of Australia, is a relatively small police force whose main role is to enforce Commonwealth (Australia wide) criminal law, contribute to the combatting of complex, transnational, serious and organised crime that impacts Australia's national security and to protect Commonwealth interests from criminal activity in Australia and overseas. Consequently, the AFP is not generally involved in the policing of protest, unless this occurs in the Australian Capital Territory (e.g. Canberra). The majority of the population in Australia live in the country's six states. Thus, the majority of day to day policing is carried out by state police forces (Victoria Police or Queensland Police, for example), operating to state legislation. It is these state police forces that are responsible for policing protest within their jurisdiction. Whilst the detail of this paper focusses on Queensland and Victoria Police, we are advised that the police approaches outlined are largely consistent with the other larger state police forces in Australia.

Identification of Police Officers policing protest

Queensland Police has a published Code of Dress[131] which requires at paragraph 12.10.1 that officers wear their Queensland Police identification badges on all their relevant uniform, including when policing protest. The officer's identification badges must include their rank with either their name (first name and surname) or their registered number (similar to a collar number in other jurisdictions). The name badge must be displayed on their chest. Whilst the Code of Dress is issued at the discretion of the Police Commissioner, rather than specific state legislation, it is given additional weight through the Police Service Administration Act 1990[132]. Section 4.9 of this Act requires every officer directed by the commissioner to 'comply in all respects with the direction'.

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131 https://www.police.qld.gov.au/sites/default/files/2019-08/MSM%20-%20Chapter%2012%20-%20Code%20of%20dress%20and%20apprearance.pdf
132 https://www.legislation.qld.gov.au/view/pdf/inforce/2017-03-01/act-1990-004

The routine wearing of name badges by officers is well established and compliance is said to be very high. It is a relatively recent addition that officers can display a number instead of their name (2013 in Queensland[133]; 2015 in New South Wales Police) and follows representations by staff that this move allows the officer to still be held to account for their actions, but prevents their unchecked public identification which can lead to harassment and threats of violence. However, the actual experience of officers or their families being threatened and harassed is thankfully very rare, and when it does occur, they will receive immediate practical security support from their police force and the occurrence will be thoroughly investigated. Officers policing protest are required to display their rank/name (or registered number) on the chest of their uniform – this will either be an 'iron on' badge or one that is sewn on. Generally, Queensland Police would attempt to police protest with officers wearing normal head gear, however, should the nature of the protest require officers to wear 'riot' helmets then these have the rank and name of the officer on them.

Wearing of Masks During Protests

Each state has its own approach to anti-masking powers. Below are some examples, rather than a comprehensive catalogue, of statutory provisions that provide the police with powers that could be used to address protester masking in a number of states in Australia. Victoria enhanced its powers considerably in 2017 with the Crimes Amendment (Public Order) Act 2017, following violent clashes in 2016 between anti-racism and anti-Islamic protesters, where both sides contained many masked and violent protesters. The police can (already) designate an area which they assess there is a likelihood of violence or disorder, including where protest is anticipated. Now, within a designated area the police can require a person to remove a face covering or direct them to leave the area – the officer must reasonably believe the person is wearing the face covering to conceal their identity or to protect themselves from crowd control substances. This is not dissimilar to the UK provision, although extends to include the purpose of thwarting the police use of tear gas to disperse a crowd. In addition, they provided for enhanced sentencing for the most serious public order offences when committed wearing a mask. For example, the maximum sentence upon conviction for violent disorder increases from 10 years imprisonment to 15 years. These powers are however not uncontroversial – many

[133] https://www.brisbanetimes.com.au/national/queensland/police-name-badges-to-become-optional-20131107-2x2kd.html

interest groups are concerned about racial discrimination[134] and the human rights implications, particularly with regard to freedom of speech, expression and assembly.

The police first applied these new powers at a protest in late 2017, with approximately 200 protesters from two opposing groups – reports suggest one protester 'was taken' away for wearing a mask[135]. It does not appear the power is routinely exercised by the Victoria Police as open source searches of media stories does not indicate further use. It should also be noted the power, as reported in the media, was exercised during a relatively small protest event. In addition, courtesy of Section 49C of the Summary Offences Act 1966, Victoria has statutory provision that prohibits a person with unlawful intent being disguised (or possessing items for that purpose), which on conviction carries a maximum sentence of 2 years imprisonment. This section was added to the 1966 act in 2005.

Several states have introduced legislation that provide police with the power to require the removal of face coverings to facilitate identification by a police officer. For example, in 2011 New South Wales amended the Law Enforcement (powers and Responsibilities) Act 2002 to provide police powers to require the removal of face coverings for identification purposes. Two years later Western Australia introduced the Criminal Investigation (identifying People) Amendment Act which provided similar powers to their police officers.

The Peaceful Assembly Act 1992 in Queensland expressly provides a statutory right to assemble (protest), but the right is limited as necessary and reasonable in democratic society to protect public safety, public order or the protection of the rights of others. The police can impose conditions on the protesters, including the requirement for no masks or face coverings if they judged the requirement necessary. Crucially, any judgements made by the police on conditions can be tested, with any unfairness addressed, through the courts. This power, by definition, can only address pre-notified protests, and does not address the issue during spontaneous or unlawful protests.

It is apparent that the Australian experience of applying these anti-masking powers is similar to those of their European and North American colleagues – the powers are relatively useful and effective

[134] https://cbdnews.com.au/police-mark-the-city-a-designated-area/
[135] https://www.abc.net.au/news/2017-09-17/rival-groups-stand-off-in-melbourne-as-anti-mask-laws-tested/8954486

when applied to situations involving very few people/officers (for example, resolving the identity of a driver during a traffic stop or a drugs search), but become very challenging within the context of policing protest, where despite large numbers of officers being deployed they are still considerably outnumbered by protesters. Here, commanders judge that intervening in a hostile crowd to enforce a 'no masks' condition will usually require a disproportionate number of officers to enforce (so limiting future options), create greater conflict with the protesters, and not progress the overall objectives of the policing operation. Hence, these powers have been rarely pursued.

The European Convention on Human Rights

Overview

The European Convention on Human Rights (ECHR) has been ratified by 49 European states including all those considered in this review. It grants citizens of those countries rights that can be enforced against their state, either through domestic law, or failing this through recourse to the European Court of Human Rights (ECtHR) in Strasbourg, France. States found to have breached the Convention are expected to change their domestic law accordingly. Therefore, when we consider officer identification rules, and laws allowing the removal of face coverings, we also need to consider their compliance with the overarching Human Rights protections. Similarly, when we consider states with written constitutions and a Bill of Rights, we must also bear in mind whether such laws are compatible with these 'higher' legal principles.

Police Identification

Although the ECHR does not contain any legal principles that directly address the issue of police identification, states who have ratified the Convention have agreed to abide by its Human Rights. Part of this agreement requires states to provide an "effective remedy" for citizens whose rights are infringed (Article 13). As the police are organs of the state, their actions have the potential to lead to human rights infringements that may require investigation. However, if police officers have no identification insignia, this can potentially curtail any attempt to investigate breaches and can have the effect of infringing the right to an effective remedy for human rights breaches. The ECtHR has ruled in favour of citizens on a number of occasions on both procedural and substantive grounds.

In *Hristovi v Bulgaria*,[136] the ECtHR held there was a procedural violation of Article 3 (prohibition on torture or degrading treatment) in respect of the authorities' failure to investigate effectively a claim of ill-treatment. Although the court accepted that there were legitimate security concerns over revealing the identity of special forces officers, those conducting the investigation must be able to identify them,[137] and that masked officers in particular needed to wear identifying insignia.[138] The deficiency in identification was described as "conferring virtual impunity on a certain category of

[136] (2012) Application no. 42697/05
[137] Para 91.
[138] Para 92.

police officers" and made the investigation ineffective."[139] In *Ataykaya v Turkey*[140], the Court ruled that there had been both a substantive and procedural infringement of Article 2 (Right to Life) following the death of a demonstrator killed following the firing of a grenade launcher. The police confronting the demonstrators were wearing balaclavas, and although the Court fell short of criticising this practice, they found that it had the, "direct consequence of giving those responsible immunity from prosecution. On account of that practice, the eyewitnesses were not able to identify the officer who fired at Tarık Ataykaya (…) and it was not possible to interview, as suspects or witnesses, all the officers who had used grenade launchers that day." Further, the Court held that, "where the competent national authorities deploy masked police officers to maintain law and order or to make an arrest, those officers should be required to visibly display some distinctive insignia – for example a warrant number – thus, while ensuring their anonymity, enabling their identification and questioning in the event of challenges to the manner in which the operation was conducted". [141]

The ECtHR confirmed these authorities in 2018 in *Hentschel and Stark v Germany*.[142] Here, the applicants alleged that they had been beaten and pepper sprayed by police officers who had not been identified or punished because they were not wearing individual insignia. The Court found this to be a procedural violation of Article 3 due to ineffective investigation and expressed the view that, "the consequent inability of eyewitnesses and victims to identify officers alleged to have committed ill-treatment can lead to virtual impunity for a certain category of police officers."[143] It should be noted here that the judges took into account the fact that the officers were helmeted as adding to their anonymity. The effect of the ECtHR's combined interventions has been to put in place a de facto requirement that all contracting countries ensure that except in exceptional situations (e.g. with undercover officers) officers should wear some form of identification which enables a complaint to be investigated effectively. Further, the more the officer's facial identity is hidden (for example by a helmet or balaclava), the greater the requirement for the displaying of identification insignia.

[139] Para 93.
[140] (2014) Application no. 50275/08).
[141] Paras 52-3.
[142] (2017-18) Application no. 47274/15.
[143] Para 91.

Removal of Face Coverings

With regard to face coverings, the relevant human rights that could be engaged are Article 9 (Freedom of Religion), Article 10 (Freedom of Expression), and Article 14 (Discrimination in Access to Rights). There is also the potential for Article 11 to be engaged if protesters believed they could not gather together without facial coverings due to potential repercussions from surveillance by the state. Article 8 (Privacy) claims have generally less traction where the alleged infringement takes place in a public space.

Where a police authority does interfere with a qualified human right such as Article 9 or Article 10, its interference will only be lawful if it is proportionate.[144] Proportionality in this sense can be demonstrated if the force shows (a) there is a legitimate justification for the infringement (e.g. to protect other human rights or prevent disorder or crime), (b) the interference will help achieve this aim, and (c) the interference is necessary (i.e. there is no reasonable available alternative that would achieve the same aim without restricting the right).

Considering Article 10, protesters may wear facial coverings as a form of expression. Here police use of laws that require the removal or confiscation of such articles could be unlawful if they do not satisfy the three tests above. In practical terms, the force would need to demonstrate that the facial coverings were a causal factor in the ability of the crowd or individuals within it to engage in violence, disorder or criminality. They may also need to demonstrate that there is the opportunity for protesters to make their point effectively without use of facial coverings. There is a lack of European case law in the area of facial coverings and protest meaning there is no clear guidance on how far police forces can go in restricting expressive uses of face coverings.

Recent case law from the European Court of Human Rights has considered the criminalization of face coverings in France and Belgium, but this has largely considered only the impact on freedom of religious expression. The Court has accepted that such a ban engages Articles 8 and 9 of the Convention, although the majority decision in the case of *S.A.S. v France* ruled that interference with such rights was proportionate to the aim of preserving the conditions of "living together" as an element of the "protection of the rights and freedoms of others", and could therefore be regarded as "necessary in a democratic society".[145] The court was less willing to accept arguments that such a ban

[144] See for example the ruling of the English High Court in *Novartis Pharmaceuticals UK Limited v Stop Huntingdon Animal Cruelty* [2009] EWHC 2716 (QB)

[145] *S.A.S. v France* (2014) Application no. 43835/11.

was necessary in a democratic society to maintain public safety, concluding that a blanket ban would be disproportionate to the public safety aim unless in a context where there is a general threat to public safety.[146] The judgment indicated that the court would be willing to consider that such a ban infringed Articles 10, 11 or 14, although such arguments were held to be unnecessary or unsubstantiated in the particular case. Two subsequent Strasbourg cases challenging Belgian laws banning the wearing of facial coverings on the grounds of Article 8, 9, and 14 infringement was also unsuccessful on similar grounds.[147] The European Court has indicated a willingness here to grant a wide Margin of Appreciation to states. Although there is little in its jurisprudence that deals expressly with non-religious Article 10 and 11 arguments, it is safe to assume that a law permitting officers to require the removal of facial coverings *where they have reasonable grounds to suspect they are being used to hide identity for the purposes of crime, disorder, or intimidation* would not be unlawful under the ECHR. However, laws based on more spurious or vague grounds are likely to be seen as incompatible with Convention rights on the grounds of disproportionality or potential for arbitrary application.

[146] *S.A.S. v France* (2014) Application no. 43835/11. Para. 139
[147] *Belcecemi et Oussar v Belgique* (2017) Application no. 37798/13 and *Dakir v Belgique* (2017) Application no. 4619/12.

Appendix A

Examples of Police Name/Badge Identification Guidelines in the United States

Washington, D.C.[148]

Identification Cards and Badges

A. Sworn members in uniform shall wear their badge and name tag on all uniform outer garments. Members shall not alter or cover the identifying information or otherwise prevent or hinder a member of the public from reading the information.

B. Sworn members, while off duty in the District of Columbia, shall:
   1) Carry their badge and identification card at all times;
   2) When not in uniform, secure their badge so as to conceal it from view; and
   3) Carry their police badge in such a manner that it is not visible to the public when in civilian attire, unless a situation arises requiring members to take police action. In those instances, members:
      a. May wear their badge on civilian attire to identify themselves as police officers; and
      b. Shall conceal the badge from view as soon as the situation requiring police action has been handled.
      c. Sworn members while on duty shall carry their badge and identification card at all times. This provision shall not apply to members in undercover assignments.
      d. Whether inside or outside the District of Columbia, members shall not leave their badge or identification card in an automobile or other location that is readily accessible to other individuals.
      e. While on-duty, sworn members not in uniform and civilian members shall have their Department-issued picture identification badge available for presentation.

148 Metropolitan Police, *Uniform, Equipment, and Appearance Standards,* General Order, PER 110, 11, July 3, 2019, https://go.mpdconline.com/GO/GO_110_11.pdf.

Massachusetts[149]

Commonwealth of Massachusetts – General Laws, Part I, Title VII, Chapter 41, Section 98C.

In any city or town which accepts the provisions of this section no uniformed police officer, and no other uniformed person empowered to make arrests, employed by such city or town shall be required to wear a badge, tag or label of any kind which identifies him by name, but any such officer or other person employed by such city or town who does not wear any such badge, tag or label shall wear a badge, tag or label which identifies him by number.

Baltimore (Maryland) Police Department[150]

Issued Police Badge

1. Every sworn member of the department shall be issued a badge of authority which shall be carried at all times while on or off-duty, except for (1) special operational reasons at the direction of the member's commanding officer or (2) when the member, off-duty, is engaged in such activities as a prudent person would reasonably conclude the carrying of a badge to be inappropriate.
2. Every sworn member shall furnish his/her name and badge number to any person upon request.
3. Uniformed members shall display their badges on the outermost garment, over their left breast.
4. Plainclothes officers and detectives, while acting in their official capacity at the scene of a serious crime or other police emergency where their identity should be known, shall affix their badges in a similar manner on the left side of their outer garments, or wear them around the neck on a secure chain or similar device. This does not apply to investigations in which they must perform their duties in an inconspicuous manner.
5. A personally purchased BPD police badge may be worn to supplement the wearing of the Issued Police Badge (e.g., wearing the issued badge on the uniform shirt and the personally purchased badge on the winter coat or sweater).

Minneapolis (Minnesota) Police Department[151]

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149 Massachusetts General Laws, chapter 41, § 98C, https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter41/Section98C

150 Baltimore Police Department, *Police Badges*, Policy 1501, March 25, 2017, https://www.powerdms.com/public/BALTIMOREMD/documents/54986.

151 Minneapolis Police Department*, 3-100 Personal Appearance and Uniforms*, Policy & Procedure Manual, December 15, 2009, http://www.minneapolismn.gov/police/policy/mpdpolicy_3-100_3-100.

3-119 NAME TAGS AND NAME TAG ATTACHMENTS (03/08/02) (12/30/10) (08/20/15)

A. Citizens are entitled to know the identity of sworn MPD employees (with very limited exceptions, i.e., in-progress undercover operations). To assist them in obtaining this public information, all employees shall wear a nametag.
B. Metal nametags shall be of engraved gold and the name shall be inked to assist in legibility and ease of reading. Nametags are lacquered upon delivery and need no additional polishing to maintain them. Nametags that show wear or no longer have the officer's name in ink shall be replaced. (07/19/07)
C. The nametag shall be affixed to the outermost garment and shall be in plain view.
D. The nametag shall have the employee's first name or initials and last name. (07/19/07)
E. The nametag shall be worn with the bottom of the nametag ¼" above the upper pocket seam, or on indicators, and centered over the right hand jacket or shirt pocket. In the case of a sweater, the nametag shall be worn on the name tag tab.
F. An employee may have one nametag attachment on the bottom of the nametag. The attachment represents either current unit assignment (precinct number, etc.) or qualified service specialty (SWAT, Canine, EMT, etc.) (07/19/07)
G. No MPD uniform garment shall have name tape affixed.

Appendix B

Section 60AA Criminal Justice and Public Order Act 1994

(1) Where —

(a) an authorisation under section 60 is for the time being in force in relation to any locality for any period, or

(b) an authorisation under subsection (3) that the powers conferred by subsection (2) shall be exercisable at any place in a locality is in force for any period,

those powers shall be exercisable at any place in that locality at any time in that period.

(2) This subsection confers power on any constable in uniform—

(a) to require any person to remove any item which the constable reasonably believes that person is wearing wholly or mainly for the purpose of concealing his identity;

(b) to seize any item which the constable reasonably believes any person intends to wear wholly or mainly for that purpose.

(3) If a police officer of or above the rank of inspector reasonably believes—

(a) that activities may take place in any locality in his police area that are likely (if they take place) to involve the commission of offences, and

(b) that it is expedient, in order to prevent or control the activities, to give an authorisation under this subsection,

he may give an authorisation that the powers conferred by this section shall be exercisable at any place within that locality for a specified period not exceeding twenty-four hours.

(4) If it appears to an officer of or above the rank of superintendent that it is expedient to do so, having regard to offences which—

(a) have been committed in connection with the activities in respect of which the authorisation was given, or

(b) are reasonably suspected to have been so committed,

he may direct that the authorisation shall continue in force for a further twenty-four hours.

(5) If an inspector gives an authorisation under subsection (3), he must, as soon as it is practicable to do so, cause an officer of or above the rank of superintendent to be informed.

(6) Any authorisation under this section—

(a) shall be in writing and signed by the officer giving it; and

(b) shall specify—

(i) the grounds on which it is given;

(ii) the locality in which the powers conferred by this section are exercisable;

(iii) the period during which those powers are exercisable;

and a direction under subsection (4) shall also be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so.

(6)Subject to subsection (6A), an authorisation under subsection (3)—

(a) shall be in writing and signed by the officer giving it; and

(b) shall specify—

(i) the grounds on which it is given;

(ii) the locality in which the powers conferred by this section are exercisable; and

(iii) the period during which those powers are exercisable.

(6A) An authorisation under subsection (3) need not be given in writing where it is not practicable to do so but any oral authorisation—

(a) must state the matters which would otherwise have to be specified under subsection (6); and

(b) must be recorded in writing as soon as it is practicable to do so.

(6B) A direction under subsection (4) shall be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so.

(7) A person who fails to remove an item worn by him when required to do so by a constable in the exercise of his power under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the standard scale or both.

(8) The preceding provisions of this section, so far as they relate to an authorisation by a member of the British Transport Police Force (including one who for the time being has the same powers and privileges as a member of a police force for a police area), shall have effect as if references to a locality or to a locality in his police area were references to any locality in or in the vicinity of any policed premises, or to the whole or any part of any such premises.

(9) In this section "British Transport Police Force" and "policed premises" each has the same meaning as in section 60.

(10) The powers conferred by this section are in addition to, and not in derogation of, any power otherwise conferred.

(11) This section does not extend to Scotland.

http://www.legislation.gov.uk/ukpga/1994/33/section/60AA

Section 60 Criminal Justice and Public Order Act 1994

1) If a police officer of or above the rank of inspector reasonably believes—

(a) that incidents involving serious violence may take place in any locality in his police area, and that it is expedient to give an authorisation under this section to prevent their occurrence,

aa) that—

(i) an incident involving serious violence has taken place in England and Wales in his police area;

(ii) a dangerous instrument or offensive weapon used in the incident is being carried in any locality in his police area by a person; and

(iii) it is expedient to give an authorisation under this section to find the instrument or weapon; or

(b) that persons are carrying dangerous instruments or offensive weapons in any locality in his police area without good reason,

he may give an authorisation that the powers conferred by this section are to be exercisable at any place within that locality for a specified period not exceeding 24 hours.

(2). . . . .

(3) If it appears to an officer of or above the rank of superintendent that it is expedient to do so, having regard to offences which have, or are reasonably suspected to have, been committed in connection with any activity falling within the authorisation, he may direct that the authorisation shall continue in being for a further 24 hours.

(3A) If an inspector gives an authorisation under subsection (1) he must, as soon as it is practicable to do so, cause an officer of or above the rank of superintendent to be informed.

(4) This section confers on any constable in uniform power—

(a) to stop any pedestrian and search him or anything carried by him for offensive weapons or dangerous instruments;

(b) to stop any vehicle and search the vehicle, its driver and any passenger for offensive weapons or dangerous instruments.

(4A). . . . .

(5) A constable may, in the exercise of the powers conferred by subsection (4) above, stop any person or vehicle and make any search he thinks fit whether or not he has any grounds for suspecting that the person or vehicle is carrying weapons or articles of that kind.

(6)If in the course of a search under this section a constable discovers a dangerous instrument or an article which he has reasonable grounds for suspecting to be an offensive weapon, he may seize it.

(7) This section applies (with the necessary modifications) to ships, aircraft and hovercraft as it applies to vehicles.

(8) A person who fails to stop, or to stop a vehicle when required to do so by a constable in the exercise of his powers under this section shall be liable on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the standard scale or both.

(9) Subject to subsection (9ZA), any authorisation under this section shall be in writing signed by the officer giving it and shall specify the grounds on which it is given and the locality in which and the period during which the powers conferred by this section are exercisable and a direction under

subsection (3) above shall also be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so.

(9ZA) An authorisation under subsection (1)(aa) need not be given in writing where it is not practicable to do so but any oral authorisation must state the matters which would otherwise have to be specified under subsection (9) and must be recorded in writing as soon as it is practicable to do so.

(9A) The preceding provisions of this section, so far as they relate to an authorisation by a member of the British Transport Police Force (including one who for the time being has the same powers and privileges as a member of a police force for a police area), shall have effect as if the references to a locality in his police area were references to a place in England and Wales specified in section 31(1)(a) to (f) of the Railways and Transport Safety Act 2003 and as if the reference in subsection (1)(aa)(i) above to his police area were a reference to any place falling within section 31(1)(a) to (f) of the Act of 2003.

(10) Where a vehicle is stopped by a constable under this section, the driver shall be entitled to obtain a written statement that the vehicle was stopped under the powers conferred by this section if he applies for such a statement not later than the end of the period of twelve months from the day on which the vehicle was stopped.

(10A) A person who is searched by a constable under this section shall be entitled to obtain a written statement that he was searched under the powers conferred by this section if he applies for such a statement not later than the end of the period of twelve months from the day on which he was searched.

(11) In this section —

"dangerous instruments" means instruments which have a blade or are sharply pointed;

"offensive weapon" has the meaning given by section 1(9) of the Police and Criminal Evidence Act 1984 or, in relation to Scotland, section 47(4) of the Criminal Law (Consolidation) (Scotland) Act 1995; but in subsections (1)(aa), (4), (5) and (6) above and subsection (11A) below includes, in the case of an incident of the kind mentioned in subsection (1)(aa)(i) above, any article used in the incident to cause or threaten injury to any person or otherwise to intimidate; and

"vehicle" includes a caravan as defined in section 29(1) of the Caravan Sites and Control of Development Act 1960.

11A) For the purposes of this section, a person carries a dangerous instrument or an offensive weapon if he has it in his possession.

(12) The powers conferred by this section are in addition to and not in derogation of, any power otherwise conferred.

http://www.legislation.gov.uk/ukpga/1994/33/section/60

Section 12 Public Order Act 1984

(1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public procession is being held or is intended to be held and to its route or proposed route, reasonably believes that—

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or

(b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

he may give directions imposing on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions.

(2)In subsection (1) "the senior police officer" means—

(a) in relation to a procession being held, or to a procession intended to be held in a case where persons are assembling with a view to taking part in it, the most senior in rank of the police officers present at the scene, and

(b) in relation to a procession intended to be held in a case where paragraph (a) does not apply, the chief officer of police.

(3) A direction given by a chief officer of police by virtue of subsection (2)(b) shall be given in writing.

(4) A person who organises a public procession and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(5) A person who takes part in a public procession and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(6)A person who incites another to commit an offence under subsection (5) is guilty of an offence.

(7)

(8) A person guilty of an offence under subsection (4) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

(9) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) A person guilty of an offence under subsection (6) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both **F2**. . . .

(11)In Scotland this section applies only in relation to a procession being held, and to a procession intended to be held in a case where persons are assembling with a view to taking part in it.

https://www.legislation.gov.uk/ukpga/1986/64/section/12